NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE ADMINISTRATION

PREAMBLE

1. **Sections Affected** / **Rulemaking Action**

Article 1	Amend
R3-1-102	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. §§ 3-107 and 41-1073

   Implementing statute: A.R.S. §§ 3-107, 41-1073, 41-1074, and 41-1075

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Shirley Conard, Rules Specialist

   Address: Arizona Department of Agriculture
   1688 West Adams, Room 124
   Phoenix, Arizona 85007

   Telephone: (602) 542-0962

   Fax: (602) 542-5420

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   This rule provides the parameters for identifying time requirements observed by the Department and identifies the criteria used to compute any period of time. The amended Article name will reflect the diversity of the Article.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   It is not anticipated that the adoption of this rule will have any impact on government, private industry, small business, or consumers.

   A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

   This rule will not economically affect the Department.

   B. *Estimated Costs and Benefits to Political Subdivisions.*

   Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

   C. *Businesses Directly Affected By the Rulemaking.*

   This rule will not economically affect any person or entity doing business with the Department.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: August 10, 1998

Time: 10 a.m.

Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4:00 p.m., August 11, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department Coordinator Patrick Stevens at (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

10. **Incorporations by reference and their location in the rules:**

None.

11. **The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE ADMINISTRATION

ARTICLE 1. ~~DEFINITIONS~~ GENERAL PROVISIONS

Section
R3-1-102. Computation of Time

Article 1. ~~Definitions~~ General Provisions

R3-1-102. Computation of Time

In computing any period of time prescribed or allowed by these rules or by an order of the Director, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

PREAMBLE

1. **Sections Affected:** / **Rulemaking Action:**

R3-2-102	New Section
R3-2-1102	Amend

2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 3-107, 3-1482, and 41-1073

Implementing statutes: A.R.S. §§ 3-1482, 41-1073, 41-1074, and 41-1075

3. **The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

Laws 1996, Ch. 102, § 42, requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes.* The rules must specify:

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);

2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and

3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched our licenses, certifications, permits and registrations to determined whether they constituted a "license" as contemplated by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that. . . *[n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* Determining whether a license required an application, or whether a license is summarily issued upon request is the basis for whether the Department is required to develop time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. Some reviews are done from our regional offices by inspectors assigned to field work. This allows a more responsive approach to local needs, but also means there are less personnel doing more varied types of work. The majority of these licenses, however, are issued from the central office where supervisors and managers are required to give final approval. For this reason the time-frames given are "maximum," to allow for situations where the license application may have to be sent to the central office for approval, or where the assigned person may not be available for licensing duties. It is extremely rare that the fully allotted time-frames will be used; particularly when the administrative completeness review is generally all that is necessary. If all the required documentation and information is submitted, the license is issued, as there are no other criteria for denial.

A.R.S. § 3-727, Imported egg products; Permit; inspection; certificate; containers; fee. This Section requires the inspection and permitting of any egg product imported into the state to be fit for human consumption. The Department has not inspected, nor issued a permit for imported egg products for at least 25 years.

5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

It is not anticipated that the adoption of this rule will have any impact on government, private industry, small business, or consumers. This rule action provides the codification of the time-frames currently observed by the Animal Services Division of the Arizona Department of Agriculture.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Currently, when incomplete applications are received, the individual programs either obtain the missing information by telephone, or send the applicant a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Animal Services Division. There will be no additional cost or benefits to the Department for administering these rules.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a license will follow current procedures and practices and no additional cost or benefits shall occur. The proposed rules will provide an intangible benefit for these businesses by identifying the time-frames in which the Division will approve or deny licenses.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public shall follow current procedures and practices when applying for licenses and no additional cost or benefits shall occur. Consumers may also receive an intangible benefit by the identification of specific time limits for processing licenses.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons, may request an oral proceeding on the proposed rules:**

Date: August 10, 1998

Time: 10 a.m.

Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., August 11, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department Coordinator Patrick Stevens at (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statue that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**
None.

10. **Incorporations by reference and their locations in the rules:**
None.

11. **The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

PREAMBLE

ARTICLE 1. GENERAL PROVISIONS

Section
R3-2-102. Licensing Time-frames
R3-2-1102. Slaughterhouse and Wholesale Processing Establishment Registration, Fees

ARTICLE 1. GENERAL PROVISIONS

R3-2-102. Licensing Time Frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in subsection (D) after receipt of the complete application. The overall time-frame is the total of the number of days provided in the administrative completeness review and the substantive review.

B. Administrative completeness review.
1. The administrative completeness review time-frames established in subsection(D) begins on the date the Department receives the application. The Department shall notify the applicant, in writing within the administrative completeness review time-frame if the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion period established in subsection (D). The administrative completeness review time-frame is suspended from the date the Department notifies the applicant of missing information until the date the Department receives the information.
3. If the applicant fails to submit the missing information before the completion period, the Department may close the file. An applicant whose file has been closed and who later wishes to obtain a license shall submit a new application.

C. Substantive review. The substantive review time-frame established in subsection (D) shall begin after the application is administratively complete.
1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in subsection (D). The substantive completeness review is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn.
2. The Department shall issue a written notice granting or denying the license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

D. Time-frames.

License	Statutory Authority (Title 3)	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
MEAT AND POULTRY INSPECTION						
License to Slaughter	3-2002 3-2003	14	14	30	14	44
Transfer of license without fee	3-2009	14	14	14	5	44
State Meat Inspection Service	3-2047	14	14	30	14	44
Sale or Exchange of Meat or Poultry	3-2081	14	14	30	14	44

Rendering Facility Certification	3-2081	14	14	30	14	44
Transfer of License	3-2086	14	14	30	5	44
Official Slaughter Meat Licenses	3-2122	14	14	30	14	44
FEEDING OF ANIMALS						
Feed Lot License	3-1452	14	14	60	14	74
Permit to Feed Garbage to Swine	3-2664	14	14	60	14	74
DAIRY PRODUCTS AND CONTROL						
Milk Distributing Plant New Renewal	3-607	 7 7	 7 7	 7 14	 7 7	 14 21
Milk Processing Plant New Renewal Plant Licensing New Renewal	3-607 3-665	 7 7 7 7	 7 7 7 7	 7 14 7 14	 7 7 7 7	 14 21 14 21
Request to market a product as a milk product	601.01(C)	7	7	7	7	14
Dairy Sampler License	3-619	2	0	0	0	2
Tester License	3-619	7	7	7	7	14
Trade Product Label	3-667	7	14	30	30	37
LIVESTOCK SELF INSPECTION						
Self-Inspection Certificates	3-1203 3-1337	5	7	30	14	35
Equine Trader Permit	3-1348	7	7	7	7	14
EGG PRODUCTS AND CONTROL						
Annual Licensing	3-714	7	7	7	7	14
AQUACULTURE						
Aquaculture Facility Fee Fishing Facility Processor Transporter	3-2907	14	14	30	14	44
Special Licenses	3-2908	14	14	30	14	44
RATITES						
Slaughterhouse and Wholesale Processing Establishment Registration	3-1482	14	14	60	14	74

R3-2-1102. Slaughterhouse and Wholesale Processing Establishment Registration, Fees

A. No change.

B. No change.

~~**C.** Registration Processing Time-frame.~~

~~1. Within 7 business days of receiving the registration and fee, the Department shall notify the operator that the registration is either complete or incomplete.~~

~~a. If the registration is complete, the operator shall receive a registration certificate and information on how to obtain a Grant of Inspection.~~

~~b. If the registration is incomplete, the notice shall specify what information is missing.~~

~~2. An operator with an incomplete registration shall supply the missing information within 7 business days from the date of the notice. If the operator fails to do so, the Department may close the file. To become registered, an operator whose file has been closed shall reapply as a new applicant.~~

~~3. Upon receipt of the missing information, the Department shall notify the operator within 7 business days that the registration is complete.~~

~~D.~~C. No change.

~~E.~~D. No change.

~~F.~~E. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

1. **Sections Affected:** / **Rulemaking Action:**

Article 1	Amend
R3-3-102	New Section

2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107 and 41-1073

Implementing statute: A.R.S. § 3-107, 41-1073, 41-1074, and 41-1075

3. **The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

Laws 1996, Ch. 102, § 42, requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes.* The rules must specify:

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);

2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and

3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames).

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched our licenses, certifications, permits and registrations to determined whether they constituted a "license" as contemplated by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . *[n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* Determining whether a license required an application, or whether a license is summarily issued upon request is the basis for whether the Department is required to develop time-frames. The Department does issue some licenses based upon review of an application, and under this statute has developed time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-3-102. In particular, the potential impact of delay on the regulated community is weighed against the resources of the agency.

Although only 3 employees process 6400 licenses each year, it is rare that the fully allotted time-frames are used. When processing new licenses every effort is made to provide a quick turn-around for the applicant. However, in the case where a renewal deadline is 30-days before the expiration date, renewals may be sent out 6- to 8-weeks in advance. If the applicant sends the renewal form back immediately, and because the Division holds and batches all applications until just before the expiration date, it is possible that the time-frame could extend to the maximum period stated.

R3-3-351, Pesticide Registration, requires a more substantive review after the application has been reviewed for completeness. With over 8,000 pesticides registered, the complexity of each registration package makes it difficult to process the application in a short period of time. The Division currently registers over 900 pesticide registration applicants. If the registration is for currently registered products, the agency must research and provide correct labels for each product. If the registration is for new unregistered products, the agency must research and verify each submitted label.

5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Currently, when incomplete applications are received, the individual programs either obtain the missing information by telephone, or send the applicant a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Environmental Services Division. The Department will assume additional costs when it is required to notify an applicant who does not submit a complete application or if additional information is needed. It is unknown what those costs may be.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a license will follow current procedures and practices and no additional cost or benefits shall occur. The proposed rules will provide an intangible benefit for these businesses by identifying the time-frames in which the Division will approve or deny licenses.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public shall follow current procedures and practices when applying for licenses and no additional cost or benefits shall occur. Consumers may also receive an intangible benefit by the identification of specific time limits for processing licenses.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: August 10, 1998

Time: 10 a.m.

Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., August 11, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department Coordinator Patrick Stevens at (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statue that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**

None.

10. Incorporations by reference and their locations in the rules:
None.

11. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

Section

ARTICLE 1. ~~DEFINITIONS~~ GENERAL PROVISIONS

R3-3-102. Licensing Time-frames

ARTICLE 1. ~~DEFINITIONS~~ GENERAL PROVISIONS

R3-3-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in subsection (D) after receipt of the complete application. The overall time-frame is the total of the number of days provided in the administrative completeness review and the substantive review.

B. Administrative completeness review.

The administrative completeness review time-frames established in subsection(D) begins on the date the Department receives the application. The Department shall notify the applicant, in writing within the administrative completeness review time-frame if the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion period established in subsection (D). The administrative completeness review time-frame is suspended from the date the Department notifies the applicant of missing information until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the completion period, the Department may close the file. An applicant whose file has been closed and who later wishes to obtain a license shall submit a new application.

C. Substantive review. The substantive review time-frame established in subsection (D) shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in subsection (D). The substantive completeness review is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn.

2. The Department shall issue a written notice granting or denying the license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

D. Time frames.

License	Statutory Authority (Title 3)	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Grower Permit	3-363	14	14	56	14	70
Seller Permit	3-363	14	14	56	14	70
Agricultural Aircraft Pilot	3-363	14	14	56	14	70
Custom Applicator License	3-363	14	14	63	14	77
Application Equipment	3-363	14	14	56	14	70
Pest Control Advisor	3-363	14	14	63	14	77
Commercial Applicator Certification	3-363	14	14	63	14	77
Private Application Certification	3-363	14	14	63	14	77
Experimental Use Permit	3-350.01	14	14	28	14	42
Emergency Use Pesticides	3-372	2	1	5	2	7
Continuing Education Approval	3-363	14	14	42	14	56
Pesticide Registration	3-351	14	14	91	14	105

Licensing Manufacture or Distribution of Commercial Feed	3-2609	14	14	42	14	56
Commercial Fertilizer License Specialty Fertilizer Registration	3-272	14 14	14 14	42 56	14 14	56 70
Agricultural Safety						
Trainer Certification	3-3125	28	14	28	14	56

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

PREAMBLE

1. **Sections Affected:** / **Rulemaking Action:**

Article 1	Amend
R3-4-102	Renumber
R3-4-102	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):**

   Authorizing statutes: A.R.S. §§ 3-107 and 41-1073

   Implementing statutes: A.R.S. §§ 3-107, 41-1073, 41-1074, and 41-1075

3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

   Name: Shirley Conard, Rules Specialist

   Address: Arizona Department of Agriculture
   1688 West Adams, Room 124
   Phoenix, Arizona 85007

   Telephone: (602) 542-0962

   Fax: (602) 542-5420

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   Laws 1996, Ch. 102, § 42, requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes.* The rules must specify:

   1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);

   2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and

   3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

   The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

   The Department researched our licenses, certifications, permits and registrations to determine whether they constituted a "license" as considered by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

   According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . *[n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is . . .*the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* The Department has examined our licenses and determined which licenses require an appli-

cation for issuance, and which licenses are summarily issued upon request. The Department does issue some licenses based upon review of an application, and under this statute has developed time-frames. However, where the Department does not require an application for issuing a license, which includes most quarantine approvals, the Department is not required to develop time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. Some reviews are done from our regional offices by inspectors assigned to field work. This allows a more responsive approach to local needs, but also means there are less personnel doing more varied types of work. The majority of our licenses, however, are issued from the central office where supervisors and managers are required to give final approval. For this reason the time-frames given are "maximum", to allow for situations where the license application may have to be sent to the central office for approval, or where the assigned person may not be available for licensing duties. It is extremely rare that the fully allotted time-frames will be used; particularly in cases when the administrative completeness review is all that is necessary. In this case, if all the required documentation and information is submitted, the license is issued, as there are no other criteria for denial.

The following licenses require a more substantive review after the application has been review for completeness.

The Cotton Boll Weevil Pest, Citrus Fruit Surface Pest, Scale Insects Pests, and the Plum Curculio Apple Maggot rules do not require an application, however a written request is necessary to determine if the applicant meets the necessary qualifications for a permit. The applicant generally calls the program manager to determine whether specific plants may be moved into or through the state. The program manager then requests the applicant to send a letter outlining the particulars of the request.

The Citrus Nursery Stock rule establishes the entry requirements for nursery stock. After an application is received the root stock registration numbers are checked to verify that they have been found free of tristesa and other plant pathogens. This process may take some time, depending upon the workload of Department personnel.

The Colored Cotton rule establishes the requirements for producing colored cotton and provides strict regulations to protect the existing cotton industry from potential colored fiber and seed contamination. This rule specifies that *[a]ll producers who intend to grow colored cotton shall register in writing with the Department no less than 30 days prior to the cotton planting dates for the cultural cotton zones prescribed in R3-4-204.* The Department uses this 30 day time period before the planting date to respond to the applicant if there are any questions concerning the application and to verify the planting location.

The Ozonium Root Rot Inspection rule explains the inspection procedure used to determine whether ozonium root rot is present in the soil. The applicant may apply for three different types of certifications:

(1) The Method of Growing certification is verified by a inspection that the applicant's plants are separated from the soil either by a raised platform, such as a bench, or some type of buffer, such as rocks, between the plants and the ground.

(2) Indicator Crop Planted on Applicant's Property. The applicant's property must be certified free from ozonium root rot for a total of three years. (Does not have to be consecutive years). The Department first provides the applicant with a list of possible crops that will qualify for ozonium root rot testing. After the crop is planted, the Department will inspect the crop three times during the growing season. If no ozonium root rot is found, the first year is established. If some of the plants in a specific field do not live, those fields will fail certification and the applicant may replant the indicator crop. Meanwhile the Department will inspect the applicant's remaining fields three times each year to continue verification of ozonium root rot-free fields.

The substantive time-frame reflects an additional 10-month period that allows for early application. For example: If the applicant applies for a certification in September, generally the first inspection won't take place until the growing season in July or August. This early application sets up the possibility that 10 months could pass where no type of review can be done. The following chart provides four possible examples for the substantive review time-frame.

YEAR	1	2	3	4	TOTAL (3 yrs. Req.)
All/Individual Fields	Pass	Pass	Pass		3 years
Individual Fields	Pass	Pass	Fail	Pass	3 years
Individual Fields	Pass	Fail	Pass	Pass	3 years
Individual Fields	Pass	Fail	Fail	Pass	2 years

If, at the end of four years, the applicant's fields do not meet a total of three-years ozonium root rot-free status, the applicant may reapply for certification for the failed fields and submit another application and certification fee.

(3) Indicator Crop Planted in Surrounding Area. If the surrounding property is already planted with indicator crops, the applicant may request the Department to establish that the applicant's property is ozonium root rot free. This free period must total two years. The same types of circumstances that apply to example (2), such as early application, three inspections per year apply to this inspection procedure. If the surrounding area is planted in rotating crops such as cotton and corn the following

chart provides four possible examples for the substantive review time-frame.

YEAR	1 **Cotton**	2 **Corn**	3 **Cotton**	4 **Corn**	5 **Cotton**	TOTAL (2 yrs. Req.)
All/Individual Fields	Pass		Pass		-----	2 years
Individual Fields	Pass		Fail		Pass	2 years
Individual Fields	Fail		Pass		Pass	2 years
Individual Fields	Pass		Fail		Fail	1 year

Other Certification Inspections (1) Nursery inspection. This inspection is used primarily for rose certification. After receipt of the application, the inspector will inspect the fields one time during the growing season (fall), and one time during the digging season (winter). If no pests are found the certification will be approved. If the application is received several months before the growing season, no inspection can take place and the application will be held. A 10 month holding period has been determined in the substantive review period. (2) Shipment inspection. The inspector completes the application after arrival at the shipment site. If no pests are found in the load, the permit is immediately approved. If a quarantined pest is found, or if the inspector is uncertain of the type of pest and must sent it to the State Agricultural Laboratory for identification, the permit will be denied. There are so many different types of pests that may be discovered on a shipment and the treatment procedures and time variances vary so greatly, that the Department decided to deny certification for a shipment unless the shipper can eliminate the pest from the entire load within 1 day and reinspection could take place. An infested shipment may be reinspected after the load is treated and the shipper reapplies for a permit, including inspection fee.

Other states and foreign countries require certification that plants, seeds, and fruits are clean and free from pests and diseases. Phytosanitary field inspections provide that certification. When an applicant inquires whether a foreign country or another state requires specific standards for their product, a preapplication determines whether that applicant qualifies for, or needs, the field inspection. After receiving the phytosanitary application the program manager will review specific country requirements and notify the inspector to inspect the plants. The length of time to approval of the phytosanitary certification depends upon the type of crop grown and whether it is necessary to inspect the field once or three times during the growing season.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:**

It is not anticipated that the adoption of this rule will have any impact on government, private industry, small business, or consumers. This rule action provides the codification of the time-frames currently observed by the Plant Services Division of the Arizona Department of Agriculture.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Currently, when incomplete applications are received, the individual programs either obtain the missing information by telephone, or send the applicant a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Plant Services Division. There will be no additional cost or benefits to the Department for administering these rules.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a license will follow current procedures and practices and no additional cost or benefits shall occur. The proposed rules will provide an intangible benefit for these businesses by identifying the time-frames in which the Division will approve or deny licenses.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public shall follow current procedures and practices when applying for licenses and no additional cost or benefits shall occur. Consumers may also receive an intangible benefit by the identification of specific time limits for processing licenses.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard

Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed:**

Date: Tuesday, August 10, 1998

Time: 10 a.m.

Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., August 11, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department Coordinator Patrick Stevens at (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.

10. **Incorporations by reference and their locations in the rules:**
None.

11. **The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 1. GENERAL ~~RULES AND DEFINITIONS~~ PROVISIONS

Section
~~R3-4-102.~~ R3-4-101. Definitions
R3-4-102. Licensing Time-frames

ARTICLE 1. GENERAL ~~RULES AND DEFINITIONS~~ PROVISIONS

~~R3-4-102.~~ R3-4-101. Definitions

R3-4-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in subsection (D) after receipt of the complete application. The overall time-frame is the total of the number of days provided in the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frames established in subsection(D) begins on the date the Department receives the application. The Department shall notify the applicant, in writing within the administrative completeness review time-frame if the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be considered complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion period established in subsection (D). The administrative completeness review time-frame is suspended from the date the Department notifies the applicant of missing information until the date the Department receives the information.
3. If the applicant fails to submit the missing information before the completion period, the Department may close the file. An applicant whose file has been closed and who later wishes to obtain a license shall submit a new application.

C. Substantive review. The substantive review time-frame established in subsection (D) shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in subsection (D). The substantive completeness review is suspended from the date the Department mails the request until the information is received by the

Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn.

2. The Department shall issue a written notice granting or denying the license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

D. Time frames.

License	Statutory Authority (Title 3)	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Quarantine						
Cotton Boll Weevil Pest	3-201.01	14	14	30	30	44
Citrus Fruit Surface Pest	3-201.01	14	14	60	30	44
Citrus Nursery Stock Pests	3-201.01	14	14	30	30	44
Lettuce Mosaic Pest	3-201.01	14	14	30	30	44
Noxious Weed	3-201.01	14	14	30	30	44
Scale Insects Pests	3-201.01	14	14	30	30	44
Plum Curculio Apple Maggot	3-201.01	14	14	60	30	74
Colored Cotton	3-205.02	14	0	0	0	14
Nursery						
Ozonium Root Rot Inspection • Method of Growing • Indicator Crop Planted On Applicant's Property • Indicator Crop Planted In Surrounding Area	3-201.01 3-217	 7 7 7	 14 14 14	 30 4 yrs 5 yrs	 14 14 14	 37 5yrs. 7 days 5yrs. 7 days
Other Certification Inspections • Nursery Inspection • Shipment Inspection	3-201.01 3-217	 30 1	 14 0	 1 yr 1	 14 0	 1 yr. 30 days 2
Phytosanitary Field Inspection • Preapplication • Phytosanitary Application	3-201.01 3-217	 2 30	 0 7	 0 120	 0 7	 2 157
• Seed Dealer License • Seed Labeler License	3-235	5 5	0 0	0 0	0 0	5 5
Standardization						
Experimental Containers	3-487	7	0	2	0	9
Experimental Containers	3-445	7	0	2	0	9
Citrus Fruit Dealer, Packer or Shipper License	3-449	10	14	10	14	20
Fruit and Vegetable Dealer, Packer or Shipper License	3-492	10	14	10	14	20

Arizona Native Plants						
Notice of Intent Confirmation Notice of Intent	3-904	7	14	7	14	14
• Qualifications for Salvage Assessed Native Plant Permits • Salvage Restricted Native Plant Permits • Scientific & Educational Permits	3-906	5 5 14	14 14 14	5 5 14	14 14 14	10 10 28
Blue Seal Permits	3-906	5	14	5	14	10
Qualifications for Annual Permits For Harvest-Restricted Native Plants	3-907	5	14	5	14	10
Hay Broker						
Hay Broker License	3-2712	5	5	5	5	10

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R4-21-101	Amend
R4-21-102	Amend
R4-21-103	Amend
R4-21-201	Amend
R4-21-202	Repeal
R4-21-202	Renumber
R4-21-202	Amend
R4-21-203	Repeal
R4-12-203	New Section
Table 1	New Table
R4-21-204	Renumber
R4-21-204	New Section
R4-21-205	Renumber
R4-21-205	New Section
R4-21-206	New Section
R4-21-207	Renumber
R4-21-207	Amend
R4-21-208	Renumber
R4-21-208	Amend
R4-21-209	Renumber
R4-21-209	Amend
R4-21-301	Amend
R4-21-302	Amend
R4-21-303	Amend
R4-21-304	Amend
R4-21-305	Amend
R4-21-306	Renumber
R4-21-306	New Section
R4-21-307	Renumber
R4-21-308	Renumber
R4-21-308	Amend

Article 4	New Article
R4-21-401	New Section
R4-21-402	New Section
R4-21-403	New Section
R4-21-404	New Section
R4-21-405	New Section
R4-21-406	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. § 32-1704

   Implementing statute: A.R.S. §§ 32-1722, 32-1723, 32-1724, 32-1726, 32-1727, 32-1729, 32-1773, 41-1003, 41-1062(B), and 41-1072 et seq.

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Ms. Alexis Kjellstrom

   Address: 1400 West Washington, Room 230
   Phoenix, Arizona 85007

   Telephone: (602) 542-3095

   Fax: (602) 542-3093

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   The current rules regarding the practice of optometry are being amended and expanded to ensure conformity with current optometry statutes and rulewriting standards. The rules are being updated to reflect the statutory amendments enacted in 1993 that expanded the optometric scope of practice. Definitions used in the optometry rules are being clarified and additional definitions are being added. Fees for licensing and biennial license renewal are being raised. In addition, new fees are being added for the registration and biennial registration renewal for nonresident dispensers who wish to fill prescriptions for replacement soft contact lenses. These new fees are presently being promulgated in a rule package that will be before GRRC at its August meeting but are included to reflect the rule, R4-21-103, as it is anticipated to be when this rule package is finalized. Licensing timeframes are being established for all licensing activities of the Board as required by A.R.S. § 41-1072 et seq. Application requirements are being clarified and made more specific. The approval of courses of study is being revised and the issuance of topical pharmaceutical agent certificates is being added. The standards of care for conducting eye examinations are being clarified and detailed. A new Article 4 is also being added to prescribe the public participation procedures which are observed by the Board and required by A.R.S. § 41-1003.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   Cost impacts for the Board will be minimal and include the cost of the rule consultant assisting with this rule promulgation. There is also a remote possibility of additional cost to the Board in the event that it fails to meet the licensing time frames and must refund licensing fees. These rules essentially codify the current Board practices. Cost impacts on currently licensed optometrists, or their employers, as well as applicants for licensure will be affected as both the initial licensure fee as well the biennial licensure renewal fee are being raised from $150 to $200, and $300 to $400, respectively. The fee increase is necessitated by a projected budget shortfall beginning in fiscal 1999 of $17,800. Additional revenues to be generated during each two-year budget cycle is expected to be about $33,000. The result of the fee increase then is to generate additional revenues for the Board, thereby increasing state revenues, to meet this shortfall. It is not anticipated that changes to the continuing education rule provisions will increase costs to licensed optometrists as the number of required hours is not being changed. Benefits of these rules are, for the most part, undefinable in economic terms, as they primarily clarify the practice of optometry in Arizona. However, the single greatest economic benefit of these rules for optometrists and applicants for licensure is the opportunity to practice optometry and derive income from that practice.

   The cost of promulgating these rules will also have a minimal impact on the Governor's Regulatory Review Council and the Secretary of State's Office. No impacts are expected for any other agencies or political subdivisions of the state. The cost impact on individual optometrists as a result of this rule package is so minimal that there is no cost impact anticipated for consumers.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Ms. Alexis Kjellstrom

   Address: 1400 West Washington, Room 230
   Phoenix, Arizona 85007

   Telephone: (602) 542-3095

   Fax: (602) 542-3093

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: August 21, 1998

Time: 3 p.m.

Location: 1400 West Washington, Room 250

Nature: Public hearing to receive comments on the proposed rule package. The record will remain open until August 28, 1998, at 5 p.m. to receive written comment.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
The following incorporations are made at R4-21-304(A):

1. *Comprehensive Adult Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

2. *Pediatric Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

3. *Care of the Patient with Diabetes Mellitus*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

4. *Care of the Patient with Amblyopia*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

5. *Care of the Patient with Primary Angle Closure Glaucoma*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

6. *Care of the Patient with Age-Related Macular Degeneration*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

7. *Care of the Patient with Anterior Uveitis*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

8. *Care of the Adult Patient with Cataract*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

9. *Care of the Patient with Open Angle Glaucoma*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

10. *Care of the Patient with Ocular Surface Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

11. *Care of the Patient with Conjunctivitis*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

12. *Care of the Patient with Strabismus: Esotropia and Exotropia*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and

13. *Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881.

11. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-21-101. Definitions
R4-21-102. Meetings
R4-21-103. Fees

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure ~~Application for license~~
~~R4-21-202. Educational qualifications for licensure~~
~~R4-21-204~~R4-21-202. License Examination ~~examination~~
~~R4-21-203. Course of study in clinical pharmacology~~
R4-21-203. Time Frames for Licensure, Renewal of License, TPA Certification, and Approval of Course of Study
R4-21-204. Renewal of License
R4-21-205. Board-Approved Course of Study
R4-21-206. Issuance of Topical Pharmaceutical Agents Certificate Reserved
~~R4-21-205~~R4-21-207. Submission of fee~~Notice of grades~~; issu-

ance and display of license; surrender of license
~~R4-21-207~~R4-21-208. Continuing Education Requirements; Program Criteria and Procedures ~~education requirements; program criteria and procedures~~
~~R4-21-208~~R4-21-209. Discretionary Exemption ~~exemption~~

ARTICLE 3. REGULATORY PROVISIONS

R4-21-301. Styles of Optometric Practice; Staff Responsibility ~~optometric practice~~
R4-21-302. False Advertising ~~advertising~~
R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacements Agreements ~~disclosures in advertising and practice~~
R4-21-304. Vision Examination Standards; Records ~~Minimum vision examination standards; records~~
R4-21-305. Prescription Standards; Release to Patients ~~Minimum prescription standards; release to patients~~
R4-21-306. Low Vision Rehabilitation and Vision Therapy
~~R4-21-306~~R4-21-307. Subpoenas
~~R4-21-307~~R4-21-308. Rehearing or Review of Administrative Decision ~~review of administrative decision~~

ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES

R4-19-401. Agency Record; Directory of Substantive Policy Statements
R4-19-402. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business or Consumer Impact
R4-19-403. Public Comments
R4-19-404. Oral Proceedings
R4-19-405. Petition for Delayed Effective Date
R4-19-406. Written Criticism of Rule

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

In this Chapter, unless the context otherwise requires, the following definitions of terms shall apply:

~~1.~~ ~~"Approved course of study in clinical pharmacology" means a course or group of courses which contain the subjects described in R4-21-203.~~
1. "Accredited" means that an educational institution is accredited by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, or the American Optometric Association Council on Optometric Education.
2. "Board" means the Arizona State Board of Optometry.
3. "Incompetence" means:
   a. The lack of professional skill or fidelity in performing the practice of optometry;
   b. Treatment in a manner contrary to accepted optometric practices;
   c. Lack of physical or mental fitness to discharge professional duties.
4. "Licensure by examination" means the applicant has met the requirement of a written and practical examination satisfying all of the requirements of A.R.S. § 32-1724.
5. "Licensure by reciprocity" means satisfying all of the requirements of A.R.S. § 32-1723.
6. "Low vision rehabilitation" means evaluation, diagnosis, management, and treatment, including the prescribing of corrective spectacles, contact lenses, prisms or filters; or the employment of any means for the adaptation of lenses.
7. "Topical pharmaceutical agents" or "TPA" means all externally-applied medications used to diagnose, treat, and manage diseases of the eye and its adnexa.
8. "TPA certificate holder" means an optometrist who has met the requirements of A.R.S. §§32-1722(A)(3) and 32-1728.
9. "Vision therapy" means an individualized treatment program prescribed to improve or rehabilitate conditions such as strabismus or amblyopia and to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the 2 eyes, and may include, for example, prescribing of corrective spectacles, contact lenses, prisms or filters, or the employment of any means for the adaptation of lenses.

R4-21-102. Meetings

Board meetings shall ~~will~~ be conducted ~~held~~ at least 6 ~~six~~ times each year at such times and places as the Board or the Governor may designate.

R4-21-103. Fees

A. In addition to fees established by A.R.S. § 32-1727, the the Board shall charge license fees as follows ~~fees relating to licenses are~~:
   1. License issuance fee: $200~~$150.00~~ in even-numbered years and $400~~$300.00~~ in odd-numbered years.
   2. Biennial license renewal fee: $400~~$300.00~~.

B. A person requesting public records shal pay ~~The Board will charge~~ the following fees for searches and copies of Board ~~its~~ records under ~~made pursuant to~~ A.R.S. §§ 39-121.01 or 39-121.03:
   1. Noncommercial copy:
      a. 5¢ per name and address for directory listings or 15¢ each if printed on labels,
      b. 25¢ per page for other records;
   2. Commercial copy:
      a. 25¢ per name and address for directory listings or 35¢ each if printed on labels,
      b. 50¢ per page for other records;
   3. Record searches: $25.00 per hour, ~~after first 15 minutes,~~ with a minimum charge of $10 (this fee shall be waived for other government agencies); and

~~C.~~ 4. Pamphlets containing optometry statutes and rules: $5.00.

C. An applicant for registration or biennial registration renewal as a nonresident dispenser shall pay to the Board a fee in the amount of $500.

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure ~~Application for licensure~~

~~A. Application must be made on forms obtained from the Board. There are two types of applications: application for license by examination and application for license by reciprocity.~~
   ~~1. Application for license by examination must be filed at least 30 days prior to the date of the licensing examination.~~
   ~~2. Application for license by reciprocity must be filed at least 60 days prior to the date of the licensing examination.~~

A. An applicant for licensure by examination shall submit to the Board all of the following information on a form provided by

the Board not later than 30 days prior to the date of the licensing examination:

1. The applicant's full name,
2. The applicant's place and date of birth,
3. The applicant's current residence;
4. The applicant's residence addresses for the past 10 years;
5. The applicant's educational background;
6. The applicant's previous optometric experience;
7. The applicant's previous optical experience;
8. The applicant's work experience or occupation for the past ten years;
9. A list of the applicant's previous state board examinations;
10. A list of the states in which applicant is or has been licensed and, if no longer valid, the reasons why;
11. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state;
12. Whether the applicant has ever been refused an optometric license or renewal in any state;
13. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board or equivalent;
14. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent, including any to determine whether the applicant's license to practice optometry should be suspended or revoked;
15. Whether the applicant has ever been arrested for, pled guilty to or been convicted of a felony or misdemeanor offense;
16. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;
17. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
18. If the answer to any of the questions in paragraphs 11 through 17 is affirmative, a complete explanation of the details and dates;
19. The signed endorsements of 3 professional or business persons, unrelated to the applicant, who have known the applicant for at least the past 3 years;
20. A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant; and,
21. A photograph of the applicant showing head and shoulders and measuring 2 inches by 3 inches.

B. In addition to the requirements of subsection (A), an applicant for licensure shall submit or arrange to have submitted ~~An application will be considered complete when it includes~~:

~~1. Completed application form.~~

~~2~~1. A completed ~~Completed~~ fingerprint card accompanied by a separate nonrefundable fee in the form of a cashier's check, certified check, or money order in an amount determined by and payable to the Arizona Department of Public Safety for the procurement of background information.

~~3~~2. The filing ~~Filing~~ fee pursuant to A.R.S. § 32-1727.

43. Evidence of the successful completion of an approved course of study ~~in clinical pharmacology~~ prescribed by A.R.S. § 32-1722(A)(3) to include the following:~~.~~
   a. An official transcript showing that the applicant has passed the course or courses, if the applicant graduated from a school of optometry on or after April 6, 1993, or
   b. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed, if the applicant graduated from a school of optometry prior to April 6, 1993.

~~5~~4. An official transcript directly from the accredited institution from which the applicant graduated with a degree in optometry. ~~A copy of all optometry college transcripts as specified by R4-21-202.~~ The transcript ~~transcripts~~ need not be filed with the application, but shall ~~must~~ be filed with the Board at least 10 ~~ten~~ days prior to the examination date.

~~6~~C. An applicant for licensure by reciprocity shall submit to the Board all of the information required by subsections (A) and (B) not later than 60 days prior to the date of the licensing examination together with ~~If for licensure by reciprocity,~~ the following additional materials:

   a1. ~~Completion of the~~ The State Certification form completed by the agency responsible for licensing optometrists in the state from which the applicant is seeking reciprocity and which shall provide the following information ~~The form, when completed, must~~:
      ~~i~~a. Confirmation ~~Confirm~~ that the state accords similar reciprocity privileges to optometrists licensed in Arizona;
      ~~ii~~b. Confirmation ~~Confirm~~ that the applicant has been engaged in the practice of optometry in or under the authority of that state for at least 4 ~~four~~ of the 5 ~~five~~ years preceding the date of the ~~this~~ application;
      ~~iii~~c. Explanation of ~~State~~ the basis for and result of any disciplinary action taken against the applicant within the preceding 10 ~~ten~~ years, including censure, probation, suspension, or revocation of the applicant's license;
      ~~iv~~d. Description of ~~Describe~~ any pending investigations or complaints regarding the applicant;
      ~~v~~e. Statement ~~State~~ that the applicant is in good standing to practice optometry in that state; and
      ~~vi~~f. Statement ~~State~~ whether the applicant is known to have been licensed to practice optometry in any other state and, if so, the name(s) of that state~~; and,~~
         ~~vii. State whether the applicant is authorized to use diagnostic pharmaceuticals.~~

   ~~b~~2. The applicant's sworn and notarized statement on a form provided by the Board which affirms ~~to the effect~~ that the applicant satisfies each of the requirements of A.R.S. § 32-1723(A)(3), (4), and (6).

~~C~~D. Applicants for licensure who fail to complete the application or to file the transcripts prior to the deadlines shall ~~may~~ not be permitted to take the examination.

~~D. If an applicant for licensure by examination has been notified of his eligibility to take an examination but is unable to do so because of a verifiable emergency, he may take the next following examination upon submitting a new application but need not pay an additional examination fee.~~

~~**R4-21-202. Educational qualifications for licensure**~~

~~An applicant shall submit to the Board official transcripts as evidence of graduation with a degree in optometry from a university or college which was accredited at the time of graduation. The Board will recognize as accredited those institutions that have been accredited by the American Optometric Association Council on Optometric Education on the date this Section was last amended. Institutions accredited by the American Optometric Association Council on Optometric Education after the date this~~

~~Section was last amended may also be approved by the Board upon a majority vote of its members. In addition, the Board may approve institutions accredited by other nationally accepted accrediting bodies, provided that the standards for accreditation are equivalent to those of the American Optometric Association Council on Optometric Education.~~

~~R4-21-204~~R4-21-202.License Examination ~~examination~~

A. An applicant for licensure shall take an ~~The licensing~~ examination which may ~~will~~ include a section on Arizona statutes and rules governing the practice of optometry ~~practical examination~~. An applicant for licensure by examination may also be required to take ~~and could include~~ a written examination covering ~~on~~ subjects currently taught in accredited schools of optometry.

1. No later than the first Board meeting of a calendar year, the Board shall ~~will~~ determine and announce for that calendar year, pursuant to A.R.S. § 32-1724, whether to administer a ~~offer~~ ~~an Arizona~~ written examination or ~~and, if so,~~ whether to accept ~~in lieu thereof,~~ documentation that an applicant has ~~of passing~~ ~~the~~ passed those written portions of the examination administered by the National Board of Examiners in Optometry determined by the Board ~~examination~~.
2. While a written examination is in progress, an examinee shall not leave the room nor communicate with any person other than a proctor of the Board without the proctor's permission. The examinee shall ~~The time allotted to~~ complete each subject of the examination within the time ~~will be~~ indicated by the written instructions. Each written examination subject shall ~~will~~ be graded separately, and an overall average shall ~~will~~ be calculated ~~from the individual scores~~ separately from ~~independently of~~ any practical exam scores. All written questions remain the property of the Board and examinees shall return them ~~must be returned~~ to the Board at the end of the examination.
3. All applicants for licensure shall complete the practical examination that may ~~The practical examination will~~ require written responses to questions about ~~on~~ slides of eye conditions that are presented and an examination of ~~on~~ clinical procedures. An applicant may be required to examine ~~which may include an examination of~~ a patient as part of the practical examination. Examinees shall supply any hand-held instruments or equipment needed for use in the clinical practice examination.

4B. An applicant who fails either the written or practical portion of the examination and applies for re-examination in a subsequent year shall retake the entire examination given in the re-examination year. An applicant for ~~Any~~ re-examination shall pay the regular ~~will require payment of a full~~ examination fee.

C. An applicant who fails the licensing examination administered by the Board may appeal the Board's determination as follows:

1. The applicant or the applicant's attorney may, within 60 days of denial, examine the applicant's most recent examination answers in the office of the Board of Optometry by appointment during regular business hours for a total time of 2 hours. The applicant may take notes and a copy of such notes shall be provided to the Board to be retained for the Board's review to protect the integrity of the examination. Dissemination of the confidential testing material is grounds for denial of license.
2. Not later than 60 days after the scores of the licensing examination most recently held have been mailed by the Board, the applicant shall file a petition for review and seven copies, with the Board. The petition shall be typed or printed, shall state specifically and include supporting evidence wherein the Board is alleged to have erred, and shall be signed by the applicant or the applicant's attorney.
3. If the Board affirms its previous decision, the applicant may request a hearing on the denial of licensure pursuant to the provisions of A.R.S. Title 41, Chapter 6, Article 6 and 10.

~~R4-21-203. Course of study in clinical pharmacology~~

~~A. An applicant for licensure shall submit proof of satisfactory completion of a course of study in clinical pharmacology having a particular emphasis on the clinical application of diagnostic pharmaceutical agents for the purpose of examination of the human eye and analysis of ocular functions. This requirement shall also apply to optometrists licensed in Arizona prior to January 1, 1982, if such optometrists wish to utilize diagnostic pharmaceutical agents in the practice of optometry. Licensed optometrists who do not satisfactorily complete an approved course of study in clinical pharmacology shall not utilize diagnostic pharmaceutical agents.~~

~~B. The course of study in clinical pharmacology must meet the following criteria:~~

~~1. The course shall contain a minimum of 40 clock hours of instruction.~~

~~2. The course of study must contain the following topics:~~

~~a. Basic principles of pharmacology — minimum of six hours: factors governing drug disposition (including drug absorption, distribution, metabolism, and excretion); pharmacokinetic variables of drug action; mechanisms of drug action (including actions at receptors, dose-response relationships, and graded drug responses); and mechanisms of chemical toxicity.~~

~~b. Anatomy, physiology, and pharmacology of the autonomic nervous system — minimum of six hours: anatomical organization of the autonomic nervous system; neurotransmission processes; recognized neurotransmitter substances in the autonomic nervous system and their receptors; and physiological responses to receptor activation or blockade.~~

~~c. Autonomic control of iris and ciliary smooth muscle — minimum of one hour: light reflex and physiological responses to drugs which activate or block cholinergic and adrenergic receptors in the eye.~~

~~d. Mechanisms of local anesthesia — minimum of two hours: physiology of nerve conduction; mechanisms of action of topical anesthetics; and pharmacological and toxicological consequences of local anesthesia.~~

~~e. Basic pharmacology of cycloplegics, mydriatics, and topical anesthetics — minimum of two hours: disposition, pharmacokinetics, pharmacological actions, side effects, and contraindications for use of these agents.~~

~~f. Prescription drugs, over the counter drugs, and other remedies which may affect ocular function — minimum of two hours: drugs prescribed for local or systemic diseases; over the counter systemic drugs and other remedies; and effects of self-medication with topical agents.~~

~~g. Beneficial and adverse drug interactions -- minimum of two hours: mechanisms of beneficial and adverse interactions; and specific interactions of cycloplegics, mydriatics, and local anesthetic drugs.~~

~~h. Systemic reactions to topically applied drugs -- minimum of one hour.~~

~~i. Diagnosis of specific diseases of the fundus of the eye and angle closure glaucoma, and the effect of topical drugs on these diseases -- minimum of two hours: angle closure glaucoma; corneal abrasions, and uveitis.~~

~~j. Hazards of misuse of topical drugs -- minimum of one hour.~~

~~k. Ocular diseases or conditions requiring referral to physicians -- minimum of one hour: diagnosis of specific diseases or conditions requiring referral.~~

~~3. Faculty for the course must include instructors with expertise in basic pharmacology and clinical pharmacology as applied to the examination of the human eye.~~

~~C. The Board will not approve a course of study in clinical pharmacology unless the faculty of such course conditions passing the course on the successful completion of an examination for competency in clinical pharmacology. The faculty of a course of study in clinical pharmacology shall prepare, conduct, and grade the examination.~~

~~D. The Board will review the course of study submitted by applicants for licensure or optometrists licensed prior to January 1, 1982, and will determine whether such course meets the criteria for an approvable course of study in clinical pharmacology. Persons planning to enroll in a course of study in clinical pharmacology for the purposes of A.R.S. § 32-1722 or 32-1723 may submit to the Board for review prior to enrollment an outline of the course or courses, name of the sponsoring institution, and names and qualifications of faculty or instructors.~~

~~E. A person will be deemed to have satisfactorily completed a course of study when he submits to the Board:~~

~~1. An outline of the course or courses, and names and qualifications of instructors if these were not submitted to the Board prior to enrollment.~~

~~2. An official transcript showing that he has passed the course or courses.~~

~~3. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed.~~

~~F. Optometrists licensed before January 1, 1982 who have satisfactorily completed a course of study in clinical pharmacology since January 1, 1977 will be issued a diagnostic pharmaceutical agent certificate.~~

R4-21-203. Time-Frames for Licensure, Renewal of License, TPA Certification, and Approval of Course of Study

A. For each type of license, renewal of license, certificate, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal of license, certificate, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. §41-1072(1) is set forth in Table 1 and begins on the date the Board receives an application and all required documents and information.

1. If the required application is not administratively complete, the Board shall send to an applicant, a deficiency notice.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application and documents.
   b. Within the time provided in Table 1 for response to the deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit to the Board the missing information specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
   c. Pursuant to A.R.S. §32-1722(C), the Board may notice a hearing for purposes of investigating the character of any applicant for licensing and any aspect of the application. The time-frame to finish the administrative completeness review is suspended from the date the Board notices the hearing.
2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If the application and submitted information do not contain all of the components required by statute or this Chapter, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.

C. For each type of license, renewal of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Board may make 1 comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the mailing date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board provides the comprehensive written request for additional information to the applicant until the Board receives the requested additional information.
2. The Board shall issue a written notice of denial of license, renewal of license, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter for licensure, renewal of license, certificate, or approval.
3. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.
4. If the applicant meets all of the substantive criteria required by statute or this Chapter for licensure, renewal of license, certificate, or approval, the Board shall issue the license, renewal of license, certificate, or approval to the applicant. An applicant receiving a license to practice optometry shall also be issued a topical pharmaceutical agent certificate.

D. In computing any period of time prescribed in this section, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday or a state holiday, in which event the period runs until the

end of the next day which is neither Saturday, Sunday, nor a state holiday. The computation shall include intermediate Saturdays, Sundays and holidays. The time period shall commence on the date of personal service, date shown as received on a certified mail receipt, or postmark date.

R4-21-204. Renewal of License

A. An applicant for renewal of licensure shall submit to the Board all of the following information on a form provided by the Board prior to August 31 of the year the license expires:
   1. Changes in the applicant's mailing address,
   2. List of all practice addresses and phone numbers,
   3. Explanation of the completion of the required continuing education,
   4. State in which the applicant currently practices and date when practice commenced,
   5. Whether the applicant is retired from the practice of optometry,
   6. Whether the applicant declines renewal of license,
   7. Whether the applicant has been arrested or convicted of any misdemeanor or felony during the renewal period;
   8. Sworn statement under oath signed by the applicant verifying the truthfulness of the information provided by the applicant, and
   9. Renewal fee;

B. If an applicant does not submit a renewal application with renewal fee before August 31 of the year the license expires, the license shall be voided as provided in A.R.S. §32-1726(A).

R4-21-205. Board-Approved Course of Study

A. An institution that provides a course of study in didactic education, pharmacology and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexa for purposes of A.R.S. §32-1722(A)(3) shall be a college of optometry which has been accredited by the American Optometric Association Council on Optometric Education.

B. A college of optometry seeking Board approval for a course of study as prescribed by A.R.S. § 32-1722(A)(3) shall make application to the Board for approval. The initial application for approval shall include the following information:
   1. Name and address of the applicant,
   2. Certification that the course is equivalent to courses provided to new graduates of the college,
   3. Number and qualifications of proposed faculty and staff, and
   4. Course outline, which shall include, but is not limited to:
      a. Diagnosis and treatment of anterior segment disease;
      b. Diagnosis and treatment of posterior segment disease;
      c. Diagnosis and treatment of glaucoma; and
      d. Diagnosis and treatment of systemic diseases and emergencies.
   5. Evidence of accreditation by the American Optometric Association Council on Optometric Education.

C. A college of optometry that offers a course of study for purposes of A.R.S. § 32-1722(A)(3) shall grant a certificate of completion or its equivalent for the course upon the successful passage by a student of a written examination which is administered by the faculty. The written examination shall not be a take-home test.

R4-21-206. Issuance of Topical Pharmaceutical Agents Certificate

A. An optometrist licensed prior to July 17, 1993, who wishes to administer, dispense, and prescribe topical pharmaceutical agents in practice shall submit a written request to the Board for such authority together with evidence that the optometrist has satisfactorily completed the course of study required by A.R.S. § 32-1722(A)(3), and that the course of study meets the criteria for an approvable course of study set forth in R4-21-205.

B. The Board shall determine that an optometrist has satisfactorily completed a course of study approved in accordance with R4-21-205 when the optometrist submits to the Board:
   1. An official transcript mailed to the Board by the issuing institution showing that the optometrist has passed the course or courses,
   2. A certificate of completion issued by the accredited institution specifying the subject matter and hours completed,
   3. Documentation from the National Boards of Examiners in Optometry that the optometrist has successfully passed the treatment and management of ocular disease examination or other examination approved by the Board after July 17, 1993.

C. An optometrist licensed prior to July 17, 1993, who is planning to enroll in a course of study in clinical pharmacology for the purposes of A.R.S. § 32-1722 or 32-1723 shall submit to the Board for review and approval, prior to enrollment, an outline of the course or courses, name of the sponsoring institution, names and qualifications of faculty or instructors, and evidence that the course of study meets the criteria for an approvable course of study set forth in R4-21-205. A request for approval of a course shall be submitted to the Board not less than 60 days prior to the date the course is offered. The time frames for the granting of a course approval are those set forth in R4-21-203.

D. An optometrist licensed since July 17, 1993, and an optometrist who meets the requirements of this section shall be issued a certificate by the Board that evidences that the optometrist is authorized to administer, dispense, and prescribe all topical pharmaceutical agents for the purpose of examining the eye and adnexa, and the diagnosis, treatment, and management of eye conditions.

E. An optometrist who is denied certification in accordance with this section or whose course of study is not approved by the Board may appeal the decision by filing a written request with the Board within 15 days following receipt of the notice from the Board of denial of certification or disapproval. The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6.

~~R4-21-205~~R4-21-207.Submission of fee; ~~Notice of grades;~~ issuance and display of license; surrender of license

~~A. After the applicants have been notified by mail of their examination results, applicants may inspect their examination answers during the regular office hours of the Board.~~

~~B~~A. Within 60 days following notification by the Board that an applicant has met the qualifications for licensure, the applicant shall submit to the Board the license issuance fee pursuant to A.R.S. § 32-1727. The Board shall ~~will~~ issue a license within 60 days following receipt of payment.

~~B~~C. An optometrist shall conspicuously display the ~~The~~ optometry license or a Board-issued duplicate ~~shall be conspicuously displayed~~ at all places where the optometrist is registered to practice optometry. In addition, each optometrist authorized to use diagnostic pharmaceutical agents or to administer, dispense, and prescribe all topical pharmaceutical agents shall

similarly display the appropriate ~~diagnostic~~ pharmaceutical agent certificate or a Board-issued duplicate. An optometrist shall surrender to the Board all licenses, certificates, and their duplicates upon order of the Board, as the result of a disciplinary action.

~~R4-21-207~~R4-21-208.Continuing Education Requirements; Program Criteria and Procedures ~~education requirements; program criteria and procedures~~

A. Each application for biennial license renewal shall be accompanied by a list of courses and a notarized affirmation by the licensee of attendance at 32 clock hours of Board-approved courses and programs in continuing education. An optometrist who makes a ~~Any~~ materially false statement in this affirmation shall ~~will~~ be subject to ~~grounds for~~ disciplinary action, including suspension or revocation of license.

B. Continuing education courses approved by the board for renewal of a license to practice optometry are

1. Educational courses offered at the American Optometric Association Convention or offered at any American Optometric Association affiliate state association convention;
2. Seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes;
3. Postgraduate courses offered by accredited schools or colleges of optometry;
4. Postgraduate correspondence courses offered by an accredited college of optometry, provided that no more than six hours of continuing education credits are claimed in a single licensing renewal period; and
5. Other continuing education courses or programs which are based upon the following criteria:
   ~~B~~a. The program shall ~~must~~ have optometric application and shall ~~must~~ be available to all optometrists. All program instructors must have expertise in the field in which they are instructing.
   ~~C~~b. A description of the program content, instructors and their qualifications, the sponsor of the program, if any, the conditions of availability, and the time and place offered must be submitted to the Board for approval 45 days prior to the date the course is offered.
   c. Learning objectives must be reasonably and clearly stated;
   d. Teaching methods shall be clearly stated and appropriate;
   e. Attendance shall be open to all optometrists and students of optometry; and
   f. Documentation of attendance must be provided to those attending.

~~D~~C. An optometrist shall not be permitted credit for ~~No~~ more than 8 ~~six~~ hours of continuing education credit ~~shall be~~ in correspondence type courses, which includes computer, on-line education. No more than 4 ~~four~~ hours of continuing education credit shall be in practice management or administration.

~~E~~D. An optometrist shall not carry-over hours ~~Hours~~ accumulated in any 1 ~~one~~ biennial license period ~~shall not be carried forward~~ to a subsequent license period.

~~F~~E. An optometrist shall ~~must~~ submit evidence of the ~~his~~ approved hours of continuing education attended with the optometrist's ~~his~~ biennial license renewal.

~~R4-21-208~~R4-21-209.Discretionary Exemption ~~exemption~~

A. In emergency situations or circumstances involving extreme hardship to an optometrist, the Board may, at its discretion and ~~may,~~ for good cause shown, reduce the number ~~amount~~ of hours of continuing education required or grant an extension of time for completion of all or part of the continuing education requirement for a particular biennial licensure period.

B. A licensee who desires a reduction of continuing education hours or an extension to complete the required hours of continuing education hours shall submit documentation to the Board of the emergency situation or circumstances involving extreme hardship which prevented the licensee from complying with the biennial continuing education requirement set forth in R4-21-208 at least 90 days prior to the date of renewal.

Table 1. Time Frames (in days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial Licensure by Examination or Reciprocity R4-21-201	90	30	10	60, or 30 if the Board has conducted a hearing regarding the applicant	10
Renewal of License R4-21-204	60	30	10	30	10
Approval of Optometry Course of Study R4-21-205	45	20	15	25	15
TPA Certification R4-21-206	10	5	10	5	15
Registration of nonresident dispenser of replacement soft contact lenses	20	10	10	10	10

ARTICLE 3. REGULATORY PROVISIONS

R4-21-301. Styles of Optometric Practice; Staff Responsibility ~~optometric practice~~

A. An optometrist shall ~~may~~ practice the profession of optometry only as a sole practitioner, as a partner with other optometrists, or as an employee of an optometrist or an optometric professional corporation. In any of these styles of practice, an optometrist may practice ~~an~~ as an independent contractor and shall ~~may~~ practice only under the name, which may include a trade names, by which the optometrist is registered with the Board.

B. An optometrist who practices the profession of optometry as an independent contractor shall:
   1. Be solely responsible for patient examination, diagnosis and treatment; and for the procedures used for scheduling and recordkeeping; and,
   2. Conduct the practice of optometry free of any control by a person not licensed to practice the profession of optometry.

C. An optometrist shall ensure that the optometrist's staff complies with the requirements of the laws and rules of Arizona that govern the practice of optometry.

R4-21-302. False Advertising ~~advertising~~

A. An optometrist shall not make, publish, or use an advertisement, printed, oral or otherwise, that contains any false, fraudulent, deceptive or misleading representations concerning ophthalmic goods or optometric services, or the manner of their sale or distribution.

B. An optometrist shall only ~~not~~ advertise as a specialist when the optometrist ~~unless~~ ~~he~~ has been certified by the American Academy of Optometry as a diplomate in that specialty or as a fellow in the College of Optometrists in Vision Development. An ~~Any~~ optometrist may advertise that the optometrist has a practice limited ~~he limits his practice~~ in some way, provided that the optometrist shall not use the term "specialist" or any derivative of that term ~~is not used~~.

C. An optometrist whose name and address appears in ~~any~~ advertisement or directory is deemed to have knowledge of the contents of that advertisement or directory.

R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements ~~disclosures in advertising and practice~~

A. ~~Any~~ advertisement for or by an optometrist offering ophthalmic goods or optometric services for a stated price or discount shall clearly indicate in the spoken word or in type size equivalent to the address line within ~~in~~ the content ~~context~~ of the advertisement:
   1. If spectacle lenses or contact lenses are offered, whether they are single vision, multifocal, or other;
   2. Whether the price includes the frame and lenses for spectacles;
   3. Whether the price includes an eye examination;
   4. Whether the price for contact lenses includes all dispensing fees, follow-up care, ~~or~~ a contact lens accessory kit, and, if an accessory kit is included, the specific features of the kit;
   5. Whether ~~any~~ restrictions are imposed upon delivery, if delivery time is advertised;
   6. The applicable ~~Applicable~~ refund policy if refunds are advertised.~~;~~ and
   7. If applicable, a statement that other restrictions apply.

B. An optometrist who prescribes treatment for a patient shall inform the patient of the optometrist's ~~his~~ fee policy prior to providing such treatment.

C. An optometrist who refers a patient to a facility in which the optometrist or a member of his family has an ownership or employment interest shall make that fact known to the patient at the time of the referral.

D. An optometrist who charges a patient a fee for a warranty, or a service or ophthalmic goods replacement agreement, shall give the patient a written copy of the warranty, or service or ophthalmic goods replacement agreement, that explains the coverage and any limitations. An optometrist shall document the transaction by making a written entry on the patient's

records, or by placing a copy of the warranty, or service or ophthalmic goods replacement agreement, in the patient's records.

R4-21-304. Vision Examination Standards; Records ~~Minimum vision examination standards; records~~

~~A. The minimum standards for a professional eye examination~~ are:

~~1. Complete case history;~~
~~2. Visual acuity of each eye: entering, uncorrected, and with best correction;~~
~~3. Ocular health examination;~~
~~4. Assessment of intraocular and extraocular muscle function;~~
~~5. Objective or subjective refraction of the eyes;~~
~~6. Diagnosis, treatment and disposition.~~

A. An optometrist shall conduct eye examinations in accordance with the standards of care established by the following American Optometric Association practice guidelines which are incorporated herein by reference and on file with the Secretary of State, and no later editions:

1. *Comprehensive Adult Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd, St. Louis, MO 63141-7881;
2. *Pediatric Eye and Vision Examination*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
3. *Care of the Patient with Diabetes Mellitus*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
4. *Care of the Patient with Amblyopia*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
5. *Care of the Patient with Primary Angle Closure Glaucoma*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
6. *Care of the Patient with Age-Related Macular Degeneration*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
7. *Care of the Patient with Anterior Uveitis*, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
8. *Care of the Adult Patient with Cataract*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
9. *Care of the Patient with Open Angle Glaucoma*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
10. *Care of the Patient with Ocular Surface Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
11. *Care of the Patient with Conjunctivitis*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
12. *Care of the Patient with Strabismus: Esotropia and Exotropia*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and
13. *Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease*, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881.

B. An optometrist shall establish and maintain a complete and legible record of each examination including all findings. All illegible records shall be deemed to be incomplete examinations. The patient record shall reflect the name of the person who makes each entry and shall be maintained by the optometrist for at least 5 ~~five~~ years after the last contact with the patient. The patient record shall include:

1. The items required by subsection (A)~~;~~,
2. The type and dosage of each use of a ~~diagnostic~~ pharmaceutical agent~~;~~,
3. Any final prescription given~~;~~, and
4. Any program of corrective procedure prescribed.

C. An optometrist who discontinues practice for any reason shall arrange for patient records to be available to the patients for 5 ~~five~~ years and shall notify the Board of the permanent location of patient records from that practice prior to the practice being discontinued. An optometrist who acquires or succeeds to the practice or patient records of another optometrist who has discontinued practice shall maintain the records or make arrangements for the records to be available to the patients for 5 ~~five~~ years after the practice was discontinued.

D. Subsequent to the purchase of optometric services, an ~~An~~ optometrist shall, upon written request of a patient, transmit a copy of any or all of the patient's requested records to any designated person. A fee may be charged to cover clerical and mailing costs. ~~and~~ A a record shall be maintained of the transfer for 5 ~~five~~ years from the date of the transfer.

R4-21-305. Prescription Standards; Release to Patients ~~Minimum prescription standards; release to patients~~

A. An optometrist shall not charge the patient any fee in addition to the examination fee as a condition for release of the patient's prescription. The requirements for optometric prescriptions are:

1. For ophthalmic lenses other than contact lenses:
   a. The refractive power of the lenses.
   b. The inter-pupillary distance.
   c. The printed name of the optometrist, the location of the office, and the signature of the optometrist.
   d. The date of the examination.
2. For contact lenses:
   a. If a patient who has not completed a trial period appropriate under the circumstances desires to have a prescription, the prescription need only contain the information required for ophthalmic lenses other than contact lenses.
   b. If a patient has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to accurately reproduce the final lenses.
   c. The printed name of the optometrist, the location of the office and the signature of the optometrist.
   d. The date of the examination and the expiration date of the prescription and the number of lenses that can be dispensed prior to the expiration date.
3. For topical pharmaceutical agents:
   a. The date of issuance;
   b. The name and address of the patient for whom the drug is prescribed;
   c. The name, strength, and quantity of the topical pharmaceutical agent;
   d. The directions for use of the topical pharmaceutical agent;
   e. The name and address of the prescribing optometrist;
   f. The written signature of the prescribing optometrist;
   g. The topical pharmaceutical agent certificate number of the prescribing optometrist; and

h. Two signature lines, under the left of which are the printed words "dispense as written", and under the right, the printed words "substitution permissible".

34. Any prescription may include additional information as the optometrist deems necessary or appropriate.

B. An optometrist who dispenses or directs the dispensing of ophthalmic materials shall ensure that prescriptions are filled accurately ~~and with quality workmanship~~.

C. An optometrist shall make his services available to verify that a ~~his~~ prescription written by the optometrist but filled by another provider of ophthalmic goods has been accurately filled. The optometrist may charge a fee for verification of the accuracy or quality of ophthalmic goods dispensed by another provider.

R4-21-306. Low Vision Rehabilitation and Vision Therapy

An optometrist may employ any objective or subjective means or methods other than surgery, for the purpose of diagnosing or treating with topical pharmaceutical agents any visual, muscular, neurological or anatomical anomalies of the eye; and use any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes including,but not limited to, the use of low vision rehabilitation and vision therapy.

~~R4-21-306~~R4-21-307.Subpoenas

All summons and subpoenas issued in connection with Board investigations or disciplinary proceedings pursuant to Title 32, Chapter 21, shall be approved by the Board and issued by the Secretary of the Board or the Executive Director appointed by the Board.

~~R4-21-307~~R4-21-308.Rehearing or Review of Administrative Decision ~~review of administrative decision~~

A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in the case may file a written motion for rehearing of the decision with the Board not later than 30 ~~ten~~ days after service of the decision. The motion shall specify the particular grounds for the rehearing. For purposes of this subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place or business.

B. A motion for rehearing under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 ~~ten~~ days after service of such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Board or its hearing officer or the prevailing party, or in any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board or its hearing officer or the prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
7. That the decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than 30 ~~ten~~ days after a decision is rendered, the Board may on its own initiative review or order a rehearing of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such rehearing shall specify the grounds therefor.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within 10 ~~ten~~ days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for the preservation of the public peace, health or safety and that a rehearing of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without opportunity for a rehearing. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for application for judicial review of the Board's final decision.

H. The terms "contested case" and "party" have the same meaning as in A.R.S. Title 41, Chapter 6.

ARTICLE 4. PUBLIC PARTICIPATION PROCEDURES

R4-21-401. Agency Record; Directory of Substantive Policy Statements

The official rulemaking record and directory of substantive policy statements is located in the office of the Board and may be reviewed any working day, Monday through Friday, from 8:00 a.m. until 5:00 p.m., except state holidays.

R4-21-402. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business or Consumer Impact

A. A petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule, pursuant to A.R.S. §41-1033, or to object to a rule in accordance with A.R.S. §41-1056.01, shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the person submitting the petition.
2. For the adoption of a new rule, the specific language of the proposed rule.
3. For the amendment of a current rule, the citation for the applicable Arizona Administrative Code number and rule title. The request shall include the specific language of the current rule, any language to be deleted shall be stricken through but legible, and any new language shall be underlined.

B. For the repeal of a current rule, the citation for the applicable A.A.C. number and title of the rule proposed for repeal.

C. The reasons the rule should be adopted, amended, or repealed, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burden-

some, or otherwise not acceptable. Additional supporting information for the petition may be provided, including:

1. Any statistical data or other justification, with clear references to attached exhibits;
2. An identification of what persons or segment of the public would be affected and how they would be affected; and
3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or as written comments offered by the public.

B. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the agency.

C. For an objection to a rule based upon the economic, small business or consumer impact, evidence that:

1. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted on adoption of the rule; or
2. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement on adoption of the rule and that actual impact imposes a significant burden on persons subject to the rule.

A. The signature of the person submitting the petition.

R4-21-403. Public Comments

A. Any person may comment upon a rule proposed by the Board by submitting written comments on the proposed rule or upon any other matter noticed for public comment in the Arizona Administrative Register to the Board on or before the date of the close of record.

B. A written comment is considered to have been submitted on the date it is received by the Board, except if a comment is mailed, the date of receipt shall be the postmarked date.

C. All written comments received pursuant to A.R.S. §41-1023 shall be considered by the Board.

R4-21-404. Oral Proceedings

A. Requests for oral proceedings, as prescribed in A.R.S. §41-1023(C), shall:

1. Be filed with the Board;
2. Include the name and current address of the person making the request; and
3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice was published.

B. The oral proceeding shall be recorded either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.

C. The presiding officer shall utilize the following guidelines to conduct oral proceedings:

1. Voluntary registration of attendees.
2. Registration of persons intending to speak. Registration information shall include the registrant's name, representative capacity, if applicable, a notation of their position with regard to the proposed rule and the approximate length of time they wish to speak.
3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time and purpose of the proceeding, and present the agenda.
4. A statement by Board representative. The statement shall explain the background and general content of the proposed rules.
5. A public oral comment period. Comments may be limited to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.
6. Closing remarks. The presiding officer shall announce the location where the written public comments are to be sent and the date and time of the close of record.

R4-21-405. Petition for Delayed Effective Date

A. A written petition to delay the effective date of the rule, pursuant to A.R.S. §41-1032, shall be filed with the Board. The petition shall contain:

1. The name and current address of the person submitting the petition;
2. Identification of the proposed rule;
3. The need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date; and
4. The signature of the person submitting the petition.

B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

R4-21-406. Written Criticism of Rule

A. Any person may file a written criticism of an existing rule with the Board.

B. The criticism shall clearly identify the rule addressed and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise considered to be improper.

C. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board pursuant to A.R.S. §41-1056.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

PREAMBLE

1. Sections Affected	Rulemaking Action
R4-28-101	New Section
R4-28-102	Repeal
R4-28-101	Renumber
R4-28-102	Amend

R4-28-103	Repeal
R4-28-103	New Section
R4-28-104	New Section
Article 2	Reserved
R4-28-201	Repeal
Article 3	Amend
R4-28-301	Amend
R4-28-302	Repeal
R4-28-302	New Section
R4-28-303	Repeal
R4-28-303	New Section
R4-28-304	Repeal
R4-28-304	New Section
R4-28-305	Repeal
R4-28-305	New Section
Article 4	Amend
R4-28-401	Amend
R4-28-401.01	New Section
R4-28-402	Amend
R4-28-403	Amend
R4-28-501	Repeal
R4-28-502	Amend
R4-28-503	Amend
R4-28-504	Amend
Article 7	Amend
R4-28-701	Amend
R4-28-801	Repeal
R4-28-802	Amend
R4-28-803	Amend
R4-28-804	Amend
R4-28-805	New Section
R4-28-1001	Amend
R4-28-1002	New Section
R4-28-1101	Amend
R4-28-1102	Amend
Article 12	Amend
Part A	New Part
R4-28-A1201	New Section
R4-28-A1202	New Section
R4-28-A1203	New Section
R4-28-A1204	New Section
R4-28-A1205	New Section
R4-28-A1206	New Section
R4-28-A1207	New Section
R4-28-A1208	New Section
R4-28-A1209	New Section
R4-28-A1210	New Section
R4-28-A1211	New Section
R4-28-A1212	New Section
R4-28-A1213	New Section
R4-28-A1214	New Section
R4-28-A1215	New Section
R4-28-A1216	New Section
R4-28-A1217	New Section
R4-28-A1218	New Section
R4-28-A1219	New Section
R4-28-A1220	New Section
R4-28-A1221	New Section
R4-28-A1222	New Section
R4-28-A1223	New Section
Part B	New Part
R4-28-B1201	New Section
R4-28-B1202	New Section
R4-28-1203	Renumber
R4-28-B1203	Amend

R4-28-1204	Repeal
R4-28-1201	Renumber
R4-28-B1204	Amend
R4-28-B1205	New Section
R4-28-B1206	New Section
R4-28-B1207	New Section
R4-28-B1208	New Section
R4-28-B1209	New Section
R4-28-B1210	New Section
R4-28-B1211	New Section
Article 13	Amend
R4-28-1301	Repeal
R4-28-1302	Amend
R4-28-1303	Amend
R4-28-1304	Amend
R4-28-1305	Amend
R4-28-1306	Repeal
R4-28-1307	Amend
R4-28-1308	Repeal
R4-28-1309	Repeal
R4-28-1310	Amend
R4-28-1311	Repeal
R4-28-1312	Repeal
R4-28-1313	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. §§ 32-2107, 32-2183.01(E), 32-2194.05(E), 32-2195.05(E), and 32-2198.10(D)

   Implementing statute: A.R.S. §§ 32-2108 et seq.

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Cindy Wilkinson

   Address: Real Estate Department
   2910 North 44th Street, Suite 100
   Phoenix, Arizona 85018

   Telephone: (602) 468-1414, Ext 145

   Fax: (602) 468-0562

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   This rulemaking will establish an up-to-date program for Arizona real estate licensees. The program, administered by the Arizona Department of Real Estate (Department), will govern licensure, education, advertising, compensation, franchises, public reports and the professional conduct of licensees. The program will assure any Department licensee and real estate purchaser of clear, understandable and consistent standards.

   The rules incorporate all current substantive policies that impose a requirement or standard on the regulated community and includes the requirements of A.R.S. §§ 25-320(L) and 25-502(F) by requesting social security numbers and tax identification numbers or employer identification numbers of all licensees.

   Most of the rules have not been revised in at least 10 years. Many of the current rules duplicate statutory provisions, are inconsistent with statutes, too narrowly focused, or are difficult to interpret.

   The extensive editing and additional language may give the appearance that many new requirements are being included in this rulemaking. Much of the new information, however, is already required as part of the license application and had not previously been included within the rules.

   The Department carefully examined this rulemaking to ensure that the terms "disclose" and "disclosure" were further described as information that would be revealed in writing, or if used in circumstances other than written advertising, the information would be orally revealed.

   SPECIFIC SECTION BY SECTION EXPLANATION OF THIS PROPOSAL

   R4-28-101. Definitions. This Section sets forth the terms used within the rules governing the real estate community, pursuant to 32 A.R.S. 20, and will simplify interpretation of responsibility and clarity of purpose.

   Some of the definitions in R4-28-201 were moved to R4-28-101 as a more logical location for information relating to the entire Chapter. Terms such as "associate broker," "department," "employing broker," and "member" were already defined in statute and have not been transferred. The term "Attorney General" needs no further clarification. The term "classroom hour" has been

replaced with the term "credit hour." Terms "ADEQ" and "ADWR" have been defined to eliminate confusion when explaining "Department" requirements and responsibilities.

In the past, there was confusion when dealing with 'trade names,' 'fictitious names' and 'd.b.a.' names. These definitions were so intertwined that it became confusing to remember which one was registered with the county or which one was registered with the Office of the Secretary of State. The Department defines 'fictitious' to broadly encompass all three terms when dealing with a name other than a person's legal name since it deals with all three in essentially the same manner.

R4-28-102. Document Filing; Computation of Time. This Section clearly explains the necessary standard for the delivery to, and receipt by, the Department for correspondence, forms, legal filings and other documents. It clarifies when a document is considered filed and gives criteria for calculating time periods. It also allows for use of the "postmark date" for determining the timeliness of filings for original or renewal licensure received by the Department.

R4-28-103. Licensing Time-Frames. Laws 1996, Ch. 102, § 42, requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.* The rules must specify:

1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);

2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and

3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frame whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched all licenses, certifications, approvals, permits and registrations to determine what constituted a "license" as contemplated by A.R.S. § 41-1073. R4-28-103 contains the final listing of those licenses that fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that *. . . [n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* Determining whether a license required an application, or whether a license is summarily issued upon request is the basis for whether the Department is required to develop time-frames. The Department does issue licenses based upon review of an application, and under § 41-1073 has developed time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R4-28-103. In particular, the potential impact of delay on the regulated community is weighed against the resources of the agency. It is extremely rare that the fully allotted time-frames will be used, particularly in cases when the administrative completeness review is all that is necessary.

The Department has not included a time-frame for a prelicensure education waiver or a continuing education waiver. These waivers are authorized by statute and although they both require the submission of a letter and supporting documentation to determine if the applicant meets the necessary qualifications for the waiver, the waivers are not required by law but are an option. Rejection of the request does not mean that the applicant is denied a real estate license or license renewal, it simply means that the applicant cannot take a "short-cut" in the licensing or renewal procedure.

The special order of exemption is not included for the same reason. If the petitioner for an exemption does not meet the qualifications for the exemption, the petitioner cannot avoid the "license procedures" but instead must apply for a public report pursuant to the statutory requirements.

The "expedited registration" for a development is not included as the time-frame is already established within A.R.S. § 32-2184.01(B).

A licensee is required to obtain approval before advertising any subdivision, unsubdivided land, time-share or membership campground. The licensee does not provide an application, nor is the licensee prohibited from advertising if all the advertising requirements are met. No time-frames are included for these approvals.

R4-28-104. Fees. All license fees specified in statute have been transferred to this Section including the fees from R4-28-301(I). This Section also establishes specific fees when the statute provides for a range of permissible fees.

Salesperson and Broker renewal fees reflect the recommendations of the Advisory Board and the Arizona Association of Realtors (AAR) by requiring a graduated renewal fee for late renewals. A.R.S. § 32-2132 places caps of $250 for broker renewal and $150 for salesperson renewal. The total graduated renewal fees schedule fall within these caps.

R4-28-301. General License Requirements. This Section removes any information duplicated in A.R.S. §§ 32-2123 and 32-2130(A) and establishes a clear process for license application. It moves specific requirements to new Sections dealing with the appropriate topics, such as branch office licenses and fees.

Subsection (A). Stakeholders suggested that the phrase "any person exercising control" be included in the rule to mean those people being responsible to submit licensing information. The Department considered this meaning too broad. This phrase would pose an unfair burden on the licensee to provide this information from these unspecified persons, and on the Department to administer enforcement while not having specific knowledge of persons or entities.

Subsection (B). Although stakeholders wish to limit disclosure to only final actions, the Department feels strongly it is necessary to be apprised of all formal charges pending, or when a judgment or sentence has been deferred.

The restriction for a professional corporation and a professional limited liability company to adopt a fictitious name has been moved to R4-28-1001(C).

R4-28-302. Employing and Designated Broker's License; Nonresident Broker. The amended R4-28-301 now establishes a clear process for licensure. Specific information currently required on a broker's application has been listed so that the applicant knows what is required. Information necessary for a partnership, corporation, limited liability company, foreign entity, self-employed broker, or nonresident broker has been placed into separate categories so the applicant can find the information easily.

A.R.S. § 25-320(L) requires a licensee or certificate holder to provide a social security number to licensing agencies. Although a broker manages the partnership and holds his/her own broker's license, the partnership holds the partnership license and, as such, each partner is being required to provide their social security number.

Subsection (J). After discussion with industry, this provision was amended to consider a change of designated broker timely if the required documents were submitted the same day or by the next business day. This timely submission would ensure that a licensed entity is not "out-of-business" for the weekend if its designated broker resigns on a Friday afternoon. The entity can locate a new designated broker, complete the paperwork, and submit it to the Department on the following Monday without having to temporarily close its offices and sever all its licensed employees.

R4-28-303. License Renewal; Reinstatement; License Changes. As in the previous two Sections, this rule establishes a clear process for license renewal, reinstatement and license changes. License changes have been grouped into three categories: those changes requiring written notification, changes requiring a completed change form, and changes which must be preapproved before implementing.

R4-28-304. Branch Office; Branch Office Manager. This Section consolidates all the requirements concerning a branch office and its manager into one location. It specifies the information required on the application and establishes the permissible responsibilities of the branch office manager.

R4-28-305. Temporary License; Certificate of Convenience. This Section specifies the information necessary for the temporary broker's, cemetery salesperson's license or certificate of convenience applicant as authorized under A.R.S. §§ 32-2133, 32-2134 and 32-2134.01.

R4-28-401. Prelicensure Education Requirements; Waiver. The language in subsection (A) was replaced by 1989 and 1993 amendments to A.R.S. § 32-2124(B) and (C), by Laws 1989, Chapter 230 (S.B. 1054), effective April 1, 1990, and Laws 1993, Chapter 140 (S.B. 1250), effective April 20, 1993. Subsection (A) has been stricken.

This Section explains how to qualify for a prelicensure waiver, describes how the waiver will be granted or denied, and identifies what information is required in a request for a waiver of the pre-license requirements. The rule also places a limit on obtaining daily prelicensure credits.

R4-28-401.01. Continuing Education Requirements; Waiver. An education review committee recommended reducing the number of continuing education hours in the mandated renewal topics from 18 hours to 12 hours, although the total number of required hours for renewal (24) is unchanged. The committee determined that by eliminating 2 of the previous 6 categories a licensee would be encouraged to take courses that were relevant to their area of specialization, thus eliminating the need to take classes that are not applicable in their speciality.

This Section contains information found currently in R4-28-401 and removes the mandatory fair housing and environmental categories.

In the past, the Department received written protests to the categories of fair housing and environmental as required courses. Business brokers and commercial licensees complained that fair housing did not apply to them. A committee of stakeholders appointed to study the issue concluded that 'fair housing' and 'environmental law' were not necessary categories for mandating a minimum of 3 renewal credit hours. The committee concluded that licensees should have more flexibility in selecting classes applicable to their specific field, which could occur if the number of mandated topics were reduced and the number of elective hours increased. Although representatives from the AAR were on the committee, AAR has taken the position that fair housing should remain a required topic. The Department considered this position, however, if concerned, the designated broker can require employees to attend fair housing as a condition of employment. Alternatively licensees may choose to attend a fair housing class.

Additional examples have been included for showing good cause for the continuing education waiver. The rule also places a

limit on the daily continuing education credits the Department will recognize.

Subsection (B) describes when the Commissioner is likely to consider a waiver of the continuing education requirement for license renewal and clarifies that if additional time is granted, the licensee is expected to complete the continuing education classes within the additional time allowed.

R4-28-402. License Examinations. This Section contains duplicative information found in A.R.S. §§ 32-2123(A), 32-2124 (B) and 32-2125.01 and that information has been stricken.

The amendment to Subsection (A) clarifies that the Department may contract with a third-party provider for the administration of the state examination, and that the exam is administered at least weekly, rather than on a monthly basis.

R4-28-403. Real Estate School Requirements; Course and Instructor Approval. Subsections (A) and (B) have been rewritten for clarity, and information currently required on the application is listed. Subsection (B) allows the applicant limited use of video and audio tapes as instructional aids.

Subsection (C) establishes the qualifications for an instructor and requires that an instructor receive approval before teaching.

It is unnecessary for the Department to receive a copy of year-end documentation. Subsection (F) requiring unnecessary record duplication and storage have been stricken.

The information currently in subsection (I) is found in A.R.S. §§ 32-2153(A)(1), 32-2153(A)(3), 32-2153(A)(5), 32-2153(B)(1) and 32-2153(B)(2), and R4-28-502. This information has been stricken.

New subsection (H) provides specific time-frames and information required by the school when any change occurs in a school, course or instructor, consistent with A.R.S. § 32-2135 and similar requirements on other "license" holders.

The information in subsection (J) overlaps the requirements in 41 A.R.S. 6, Article 6, Adjudicative Proceedings, and Article 10, the Office of Administrative Hearings, and has been stricken.

R4-28-502. Advertising by a Licensee. This Section, which is updated for clarity, includes the 'trade name' requirements transferred from R4-28-1001, and allows the terms 'group' and 'team' to be used. It also incorporates electronic media advertising.

A Certificate of Trade Name is no longer required and an applicant may apply to the Department for a name on a first-come, first-served basis. If the proposed name is not misleading or another licensee has not already been issued a license under a deceptively similar name, the applicant will obtain permission to use the name requested.

This Section clarifies that "Internet" or "web site" promotion by a licensee qualifies as advertising and is subject to the provisions of applicable statutes and rules.

R4-28-503. Promotional Activities. This Section deals only with promotional activities. Statute requirements for advertising material specifically prohibits any *untrue statement of material fact or any omission of material fact which would make such statement misleading in light of the circumstances under which such statement was made*. Since this prohibition is already specific with regards to false advertising, subsection (A) is unnecessary.

Subsection (D) contains information required on the application for operating a lottery, contest drawing or game of chance. Although the statutes require approval before a subdivider or membership campground operator may hold a lottery, or game of chance, no rule previously existed to implement the process or to identify what information is required.

R4-28-504. Development Advertising. Statutes clearly prohibit advertising of a development before approval except under a conditional approval or lot reservation which must be clearly identified. Subsection (A) has been stricken.

Statutes require a developer to submit advertising only upon request, making Subsection (B) unnecessary.

Subsections (C) through (F) are duplicative of statute and have been stricken. Adult and retirement community advertising requirements in subsection (P) is covered in statute and the federal fair housing act and has been stricken.

Elements of subsection (R) are in conflict with both Department practice and statutory provisions. The only time legitimate marketing may take place without a public report is under a conditional sales exemption while in process of obtaining a public report, and by utilizing lot reservations. In the case of a conditional sale, adequate disclosure is provided; in a lot reservation, the disclosure and sale price quote are not prohibited. This subsection has been stricken.

R4-28-701. Compensation Sharing; Disclosure. Subsection (A) has been rewritten for clarity. The last sentence of subsection (A) and subsection (B) were added to statute in 1997 (A.R.S. § 32-2152(B) and (C)) and have been stricken.

R4-28-802. Conveyance Documents. This Section has been edited for clarity and conciseness.

AAR believed our initial revision to this Section was too broad in that it required a salesperson or broker to provide to others a copy of any, or all, documents in a transaction. AAR's fear was that these documents may contain information to which the party was not entitled and should not have received. AAR believes that providing these documents would result in a violation of the broker's fiduciary duty and suggested that the broker or salesperson be required to provide a copy of an executed document only to the broker's or salesperson's "client." The Department believes this requirement would be too narrow. For example, in a "for sale by owner" situation, a broker representing the buyer should be obligated to provide the owner with a copy of the contract and addenda, if any, even though the seller is not the broker's "client."

Additionally, to eliminate the obligation of the "professional" in a real estate transaction to provide that each party signing a transaction document with a legible copy is, in the Department's opinion, moving in the wrong direction.

R4-28-803. Contract Disclosures. This Section establishes specific language or placement of information on a contract and sets up the requirements for the developer.

The law does not require earnest money to be placed in an escrow account. The law does, however, prohibit commingling of escrow money. To verify the location of earnest money, subsection (C) requires that the contract discloses where the money will be deposited. Subsection (D) requires the Department to place a disclosure in the public report when a developer's contract provisions are inconsistent with any provision in A.R.S. § 32-2181, et seq, thereby warning the purchaser of possible problems. Statutes clearly require a developer to keep and maintain records of all sales transactions and to make them available for Department examination.

R4-28-804. Rescission of Contract. This Section has been edited for clarity and conciseness.

R4-28-805. Public Report Receipt. This Section contains, with editing, the public report receipt information currently found in R4-28-803. The burden of maintaining the receipt is placed upon the developer. The developer may designate another party to maintain the receipt, but this requirement will allow the Department to have only one responsible party to deal with.

R4-28-1001. Fictitious Name Requirements. It is important to be able to identify licensees through their fictitious names. However, when the protection of the public is considered, it is apparent the rule is too restrictive. This rule allows brokers to adopt fictitious names and contains information on fictitious names transferred from other rules.

The 'trade name' information has been moved to R4-28-502(K) and has been stricken from this Section.

R4-28-1002. Franchises. This new Section contains the information required from an applicant before a franchise is acquired, relinquished or transferred.

R4-28-1101. Duties To Client. This Section has been edited for clarity and conciseness.

R4-28-1102. Property Negotiations. This Section has been edited for clarity and conciseness.

Part A. Development, R4-28-A1201. through R4-28-A1223. This Part contains the information currently required when applying for a public report, or for a certificate of authority to operate a cemetery. It also includes the specific information required from a corporation, partnership, limited liability company, trust, and a subsidiary corporation.

Part B. General Information, R4-28-B1201. through R4-28-B1211. This Part contains general public report information and lists material changes that require amending the public report.

A public report must be amended whenever a change occurs that causes the public report to be incorrect or incomplete. However, if the change does not relate to information printed in the public report, no amendment to the public report is generally required.

In the proposed Section, the Department has tried to provide consumer protection while at the same time recognizing business practicalities. Notice to the Department of all changes is still required, but the Commissioner, in R4-28-B1203, has the flexibility to reclassify what would normally be a material change to a non-material change not requiring public report amendment.

If a developer amends a public report because of a material change, this Section allows the purchaser to cancel or rescind the purchase, provided the material change adversely impacts the purchaser and was caused by the developer, or an entity controlled by the developer, or the developer had actual knowledge of the material change at the time the real estate sales contract was executed by the purchaser or escrow closed. If the developer was not aware of and did not cause the material change, the purchaser may cancel the sales contract if the material change would adversely affect an occupant's health, safety or ability to make designated use of the lot and the purchaser has not completed performance under the contract and has not taken possession.

R4-28-1302. through R4-28-1313. Administrative Procedures. This Article has been edited to remove any requirement already covered in 41 A.R.S. 6, Article 6, Adjudicative Proceedings, and Article 10, Uniform Administrative Appeals Procedures.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

N/A

6. **The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking clarifies the 1989 and 1993 amendments to A.R.S. § 32-2124(B) and (C), by Laws 1989, Chapter 230 (S.B. 1054), effective April 1, 1990, and Laws 1993, Chapter 140 (S.B. 1250), effective April 20, 1993, and Laws 1996, Ch. 102, § 42 which require agencies to adopt rules establishing time-frames for the granting or denial of licenses.

The rule changes have created a clear procedure for a license applicant, especially when applying for a public report.

A. *Estimated Costs and Benefits to the Arizona Department of Real Estate.*

Management of licensing records in a major function within the Department. The changes proposed to the licensing forms will require intensive labor concentration to set up new forms. The Department anticipates that 4 people will spend 4 hours each week for 8 weeks to update forms (128 hours), and 4 groups of 4 people each will spend at least 2 hours each week for 2 weeks

(64 hours) for training in the required licensing components, the necessity to clearly impart the required information, and to check for compliance.

During the past five years, the following licenses have been issued:

LICENSES	1993	1994	1995	1996	1997
Salesperson (Incl. Non Resident)					
New	3,436	4,085	4,000	4,056	3,939
Renewal	11,418	11,653	11,065	12,269	10,765
Broker (Incl. Non Resident)					
New	633	601	631	932	610
Renewal	4,210	4,000	6,115	5,762	4,843
Temporary Broker				1	3
Corporation (Calendar Year)					
New	222	216	225	217	321
Renewal	288	157	153	380	#
Limited Liability Company					
New	20	59	72	109	128
Renewal	1	3	4	21	#
Partnership					
New	24	15	14	7	11
Renewal	30	12	12	20	#
Branch Office					
New	108	127	149	164	13
Renewal	111	61	75	163	#
Certificate of Convenience Temporary Cemetery Salesperson	23**	59**	62**	100**	68**
School Approval	106	96	83	83	89
Course Approval (New/Revised)	640	745	504	510	302
Instructor Approval	342	305	228	115	138
Public Report Application	1,783***	1,259***	1,295***	770	637
Amended Public Report				513	360

* Combined entities ** Combined temporary licenses *** Combined application and amended reports
# 1997 entity renewal numbers are not available because of a design error in the Department's custom software.

In the last 5 years, salespersons and brokers have made the following number of changes to their licenses:

1993 35,663

1994 35,385

1995 22,788

1996 23,305

1997 22,207

In 1995, the Department promulgated rules that increased the 12 classroom hours of continuing education on mandatory topics to 18 hours by adding fair housing and environmental issue categories to the education rule. The increase in mandatory topics was to accommodate the addition of the two new categories. It was thought that these categories would reduce the number of fair housing violation complaints and actual violations of the fair housing laws, and inform the industry of the environmental issues concerning underground storage tanks and the superfund sites. In the past three years the fair housing complaints have decreased. However, although these categories were beneficial to licensees, business brokers and licensees dealing with commercial and agricultural property complained that fair housing did not apply to them. As previously mentioned in the explanation of the rule, a committee of stakeholders appointed to study the issue concluded that 'fair housing' and 'environmental law' were not necessary categories for mandating a minimum of 3 renewal credit hours. The committee concluded that licensees

should have more flexibility in selecting classes applicable to their specific field, which could occur if the number of mandated topics were reduced and the number of elective hours increased.

In the last five years, the following fair housing complaints have been received by the Attorney General's Office:

1993 204

1994 281

1995 169

1996 135

1997 114

The Department believes that there can and will be changes in the public report information initially provided under A.R.S. § 32-2181 which are either so obvious or so insubstantial that they should not be considered material changes for purposes of A.R.S. § 32-2184 and should not require the Department to suspend sales pending an amendment to the public report. Suspension of sales may have a significant adverse impact on many persons, including the purchaser and subdivider. For instance, the creation of a new utility easement over one lot in a subdivision. If the developer is required to suspend all new sales as well as pending escrow closings while obtaining a new title report and awaiting the issuance of an amended public report, serious consequences can result: loan commitments could expire; buyers who have planned to close escrow on the sale of their existing residence upon acquiring a new residence may lose their sale; interest rates may increase pending the deal; buyers may have terminated leases expecting immediate possession; or buyers may have made arrangements to have their possessions transported. A suspension of new sales may have an adverse effect on existing owners. Delayed closings may create significant cash flow problems for developers who are anticipating closing proceeds and the developer may lose seasonal buyers. While the easement may affect a buyer of the one lot, it does not necessarily affect all lots.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. *Businesses Directly Affected By the Rulemaking. (Salespersons, brokers, corporations, limited liability companies, partnerships, trusts, real estate schools, real estate teachers.)*

All current practices, forms and substantive policy statements that impose requirements on the regulated communities have been incorporated into this rulemaking to provide a regulatory inclusive document for businesses.

The rules have been structured and formatted to create a logical process for any person when applying for, or understanding, the various provisions in this program.

In the last three years, the Department received written protests to the categories of fair housing and environmental issues as required courses. Business brokers and commercial licensees complained that fair housing does not apply to them. A committee of stakeholders appointed to study the issue concluded that 'fair housing' and 'environmental issues' were not necessary categories for mandating a minimum of 3 renewal credit hours. The committee concluded that licensees should have more flexibility in selecting classes applicable to their specific field, which could occur if the number of mandated topics was reduced and the number of elective hours increased. Although representatives from the AAR were on the committee, AAR has taken the position that fair housing should remain a required topic. The Department considered this position, however, if concerned, the designated broker can require employees to attend fair housing as a condition of their employment. Alternatively licensees may choose to attend a fair housing class. Fair housing and environmental issues remain topics approved for credit.

An education review committee recommended reducing the number of continuing education hours in the mandated renewal topics from 18 hours to 12 hours, although the total number of required hours for renewal (24) is unchanged. The committee determined that by eliminating 2 of the previous 6 categories a licensee would be encouraged to take courses that were relevant to their area of specialization, thus eliminating the need to take classes that are not applicable in their speciality.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Although the rules apply to the real estate development and brokerage communities, consumers and the public will benefit through the implementation of clear, understandable and consistent standards, and the contract disclosure and rescission requirements.

By eliminating rules which are no longer relevant and updating the real estate program to remove inconsistencies and unfair practices, this rulemaking will provide consumers with a fair and understandable means of acquiring Arizona real estate.

The Department has included all substantive policy statements that imposed requirements on the regulated community and requirements which have evolved from practice/regulation/ experience into this rulemaking and provides that information to the public through its rules.

F. *Estimated Costs and Benefits to State Revenues.*

State revenues are not directly affected by the implementation and enforcement of this rulemaking.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cindy Wilkinson

Address: Real Estate Department
2910 N. 44th Street, Suite 100
Phoenix, Arizona 85018

Telephone: (602) 468-1414, Ext 145

Fax: (602) 468-0562

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: August 5, 1998

Time: 10 a.m.

Location: Department of Real Estate
2910 N. 44th Street, Administration Conference Room
Phoenix, Arizona

Nature: Oral Proceeding

Date: August 4, 1998

Time: 10 a.m.

Location: Department of Real Estate
400 West Congress, Room 222
Tucson, Arizona

Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., August 7, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Departments Coordinator Richard Simmonds at (602) 468-1414, Ext. 160 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.

10. **Incorporations by reference and their location in the rules:**
None.

11. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

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ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADWR" means the Arizona Department of Water Resources.
3. "Credit hour" means 50 minutes of instruction.
4. "Course" means a class, seminar, or presentation.
5. "D.b.a." means 'doing business as.'
6. "Fictitious name" means any name used to conduct business other than a person's legal name, and includes a d.b.a. name and trade name.
7. "Franchise" means a contract or agreement, either express or implied, oral or written, between 2 or more persons by which:
   a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods

or services under a marketing plan or system prescribed in substantial part by a franchiser; and

b. The operation of the franchisee's business pursuant to the plan or system is substantially associated with the franchiser's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchiser or its affiliate; and

c. The franchisee is required to pay, directly or indirectly, a franchise fee.

8. "Property interest" means any parcel, unit, share, use or interest in a development, including a lot, subdivided and unsubdivided land, cemetery plot, condominium, time-share interval, membership camping contract, and stock cooperative.

~~**R4-28-102. Department action**~~

~~Any action to be taken by the Commissioner pursuant to these rules may be performed by the Department members or by such officers, employees, agents or representatives of the Department as permitted by law and authorized by the Commissioner.~~

~~**R4-28-101**~~ **R4-28-102.~~Filing and notices~~ Document Filing; Computation of Time**

~~Whenever filing with, or notice to, the Arizona State Real Estate Department is required by these rules, or 0pursuant to A.R.S. Chapter 20, Title 32, such correspondence shall be delivered in person or mailed to the Department at its principal place of business or designated branch. The date of such filing or notice, unless otherwise specifically provided in these rules, shall be the date upon which the document is received by the Department. Copies of all forms referred to in these rules are available at the office of the Arizona Real Estate Department.~~

A. All documents shall be considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline shall be considered timely.

B. In computing any period of time prescribed or allowed by these rules or by an order of the Commissioner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday or a legal holiday in which event the period runs until the end of the next day which is neither Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

~~**R4-28-103. Fingerprinting**~~

~~Since it appears there is a need for fingerprint investigations for purposes of licensing and subdivision regulation, the Commissioner, upon his own initiative, may require the following to submit to fingerprinting as provided by Arizona real estate law:~~

~~1. Brokers and salespersons upon application for an original license pursuant to A.R.S. § 32-2123;~~

~~2. Brokers and salespersons upon application for a renewal of license pursuant to A.R.S. §32-2130;~~

~~3. Persons directly involved in subdividing within the state pursuant to A.R.S. § 32-2181;~~

~~4. Persons directly involved in the sale or lease of unsubdivided lands within this state pursuant to A.R.S. § 32-2195.01.~~

R4-28-103. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in subsection (D) after receipt of the complete application. The overall time-frame is the total of the number of days provided in the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frames established in subsection(D) begin on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame if the application is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant, the license application shall be deemed administratively complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion period established in subsection (D). The administrative completeness review time-frame is suspended from the date the Department notifies the applicant of missing information until the date the Department receives the information.

3. If the applicant fails to submit the missing information within the completion period, the Department may close the file. An applicant whose file has been closed and who later wishes to obtain a license shall submit a new application.

C. Substantive review. The substantive review time-frame established in subsection (D) begins after the application is deemed administratively complete.

1. The Department may schedule an inspection.

2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in subsection (D). The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall deem the application withdrawn.

3. The Department shall issue a written notice granting or denying the license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

D. Time frames.

License	Statutory Authority (Title 32)	Administrative Completeness Review	Completion Period	Substantive Completeness Review	Additional Information Period	Overall Time-frame
LICENSING:						
Broker and Salesperson	2122					
(Individual, Natural Person)		15	15	45	30	60
Renewal (without change)		15	15	0	0	15
Modified/Amended		15	15	45	30	60
Corp/LLC/Partnership/ PC/ PLC	2125	30	30	90	60	120
Renewal (without change)		30	30	0	0	30
Modified/Amended		30	30	90	60	120
Branch Office	2127					
New/Renewal		5	10	5	10	10
Temporary Broker	2133	30	30	90	60	120
Temp Cemetery Salesperson	2134	30	30	0	0	30
Membership Camping Cert. of Convenience	2134.01	30	30	90	60	120
School Approval	2135(A)	10	15	20	0	30
Course Approval:	2135					
New and Revised		10	15	20	15	30
Instructor Approval	2135	10	15	20		30
Membership Campground	2198.10(D)	15	5	0	0	15
Advertising	2198.14					
Public Report Application	2183(A) 2195.03(A) 2197.06 2198.02	20	20	50	20	70
Amended Public Report	32-2184 2195.10 2197.03 2198.01(D)	10	10	10	10	20
Certificate of Authority	2194.03(A)	20	20	50	20	70
Amended Certificate	2194.10	10	10	10	10	20

E. Renewals. If an applicant for renewal of a salesperson's or broker's license submits a complete renewal application:
1. Before the expiration date and there are no changes in the applicant's license or qualifications pursuant to R4-28-301(A), the Department shall send the applicant notice that the license is renewed;
2. After the expiration date, or a substantive review is required because the applicant wishes to make changes or has answered in the affirmative to any question on the license questionnaire, the Department shall process the application as a modified or amended application.

R4-28-104. Fees

A. Licensing Fees.

1.	Broker's exam and examination application	$110.
2.	Broker's license	$125.
3.	Broker's renewal (Timely)	$125.
4.	Broker Renewal pursuant to A.R.S. § 32-2130(C) (Additional per month fee. Maximum $120)	$20.
5.	Salesperson's exam and examination application fee	$85.
6.	Salesperson's license	$60.
7.	Salesperson's renewal (Timely)	$60.
8.	Salesperson's renewal pursuant to A.R.S. 32-2130(C) (Additional per month fee. Maximum $60)	$10.
9.	Branch office license	
	a. 12 months or less	$35.
	b. 13 to 24 months	$50.
	c. Renewal	$50.
10.	Change of name and address	$10.
11.	Temporary broker's license	$50.

B. Development fees.

1.	Public Report $500.	
	a. Subdivision public report, amended	$250.
	b. Unsubdivided land public report, amended	$500.
	c. Membership camping public report amended/renewal	$300.
2.	Time-share public report (per interval, maximum $1,000)	$20.
3.	Membership camping lottery or drawing application	$250.
4.	Conditional Sales Exemption	$100.
5.	Special Order of Exemption	$100.

C. An inspection fee shall be charged if the Department determines that a development site inspection is necessary before or after issuance of a public report. Multiple inspections and fees may be required based on development circumstances.

ARTICLE 2. ~~DEFINITIONS~~ RESERVED

R4-28-201. General Definitions

~~In these rules, unless specifically defined otherwise within the text, the following definitions shall apply:~~

~~1. All definitions are included in A.R.S. § 32-2101, except those which may be modified by definitions as set forth in this rule.~~

~~2. "Advance fee rental agent" means:~~
~~a. A real estate licensee who negotiates rentals or furnishes rental information to prospective tenants whereby they are obligated to pay a fee in advance of services, whether or not a rental is obtained through such services; or~~
~~b. A real estate licensee who solicits or obtains rental listings from landlords or managers in expectation of compensation by including the listings in rental information to be furnished to prospective tenants.~~

~~3. "Associate broker" means the holder of a broker's license, other than a designated broker, who is entitled to act as a broker only as an officer or agent of a corporation or partnership through corporate resolution or as a member of the partnership through partnership agreement, and pursuant to A.R.S. § 32-2125.~~

~~4. "Attorney General" means the duly elected or acting Attorney General of Arizona and his duly appointed assistants.~~

~~5. "Change fee" means a fee payable upon filing of changes in licensee status.~~

~~6. "Classroom hour" means a period of 50 minutes of actual classroom instruction.~~

~~7. "Department" means the Arizona State Department of Real Estate.~~

~~8. "Development" means any division or proposed division of real property which the Department has authority to regulate, including but not limited to: Subdivided or unsubdivided lands, cemeteries, condominiums, time shares, membership campgrounds and stock cooperatives.~~

~~9. "Employing broker" shall mean one of the following:~~
~~a. A lawfully organized corporation having an officer licensed as the designated real estate or cemetery broker pursuant to A.R.S. § 32-2125(A). The "manager" of a close corporation organized pursuant to A.R.S. § 10-201 et seq. shall be an officer within the meaning of this rule.~~
~~b. A partnership having a member licensed as the designated real estate or cemetery broker pursuant to A.R.S. § 32-2125(A).~~
~~c. A sole proprietorship if the sole proprietor is a licensed real estate or cemetery broker. For purposes of this rule, a sole proprietor is a person who owns, has exclusive title or legal right to the business.~~

~~10. "Franchise" means a contract or agreement, either express or implied, oral or written, between two or more persons by which:~~
~~a. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and~~
~~b. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and~~
~~c. The franchisee is required to pay, directly or indirectly, a franchise fee.~~

~~11. "Member," when used in the context of a partnership, means a partner of a partnership pursuant to A.R.S. § 32-2101(11), A.R.S. § 32-2125, and for purposes of these rules.~~

ARTICLE 3. ~~LICENSE APPLICATIONS: TYPES; REGULATIONS~~ LICENSURE

R4-28-301. ~~Licenses: Application; Use; Exemption~~ General License Requirements

~~A. An application for a license or license renewal shall be completed by the applicant, signed by the applicant and filed by mail or in person at any office of the Department. License~~

~~applications or renewals shall be on a form furnished by the Department. The appropriate fee shall accompany the application.~~

~~B. Prior to renewal of any license, the Commissioner may require the applicant to provide additional information to reaffirm the good moral character of the applicant as set forth in A.R.S. § 32-2130(D).~~

~~C. Every licensee shall, within ten days of each occurrence, notify the Commissioner of:~~

~~1. Any misdemeanor and felony conviction.~~

~~2. Any adverse decision of a court of competent jurisdiction rendered as the result of a civil suit or judgment in which the licensee appeared as the defendant, and in which the subject matter involved a real estate transaction to which he/she was a party.~~

~~3. Any restriction, suspension, or revocation of any professional or occupational license or registration held by the licensee in any state, district or possession of the United States or under authority of any federal agency or body or the imposition of any reprimand, censure, fine or other penalty under such license or the denial of application or reapplication for any such license.~~

A. Any person applying for a license shall submit the following information about the applicant including the following information about each director, partner, officer, manager, member, or entity who will hold or control 10% or greater interest in the license:

1. A signed certification questionnaire sworn before a notary public, or witnessed by department personnel, disclosing:
   a. If an applicant has been convicted of a misdemeanor or felony, or has had a judgment or sentencing deferred;
   b. If any order, judgment or adverse decision has been entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts or campgrounds;
   c. If any restriction, suspension, or revocation of a professional or occupational license or registration currently or previously held by the applicant in any state, district or possession of the United States or under authority of any federal or state agency has been imposed; if any reprimand, censure, fine or other penalty under the license has been imposed, or if the applicant has been denied any license;
   d. If the applicant has been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or the racketeering laws;
   f. If the applicant has any formal charges pending.
2. If any response to subsection(A)(1) is answered in the affirmative, the applicant shall provide the following written documentation for each person who answered in the affirmative:
   a. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction stating the reason the records are unavailable.
   b. Three written references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least 1 year before the date of receipt of the application.
   c. A 10-year work history, reflecting the employer's name and address, supervisor's name and telephone number, and dates of employment, including any periods of unemployment.
   d. A certified copy of any document such as findings of fact and conclusions of law and order assessing a civil penalty or denying, suspending, restricting or revoking any professional or occupational license held or previously held by the applicant within the last 10 years.
   e. A certified copy of any civil judgment awarded by a court of competent jurisdiction in which the applicant was a party and which included findings of fraud or dishonest dealings by the applicant.
   f. A certified copy of any document of a payment against, or repayment by, the applicant as a judgment debtor by any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, the written disclosure of the file number, approximate date and approximate amount of payment and current repayment status shall satisfy this requirement.
   g. A certified copy of any temporary or permanent order of injunction entered against the applicant.
   h. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.
3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01; and
4. The appropriate license application and fee.

B. In addition to the information required in subsection (A), any person applying for a salesperson's or broker's license shall meet the qualifications listed in A.R.S. § 32-2124, and A.A.C. R4-28-401 and R4-28-402, if not already provided, and shall submit a certified license history from each state in which the applicant holds, or has held, a professional occupational license within the 5 years preceding the application.

C. Any person applying for a broker's license who is an actively licensed salesperson in this state shall not receive a broker's license until the broker who employs the salesperson severs the license as prescribed in R4-28-303(E).

~~D. Except as provided by A.R.S. § 32-2125.01, no licensee shall hold more than one Arizona real estate license. A licensee shall neither hold himself or herself out to engage in, nor actually engage in, any real estate brokerage business in Arizona other than the one for which he or she is licensed by the Department.~~

~~E.~~D. ~~No name will be placed on a license except the~~ Only the legal name of the licensee ~~or any such~~ and additional nickname, corporate or fictitious name ~~which~~ that the Commissioner finds is not detrimental to the public interest shall be placed on a license certificate. ~~No corporation licensed pursuant to A.R.S. § 32-2125(B) may adopt a fictitious name.~~

~~F.~~E. Every ~~licensee~~ salesperson and broker ~~who is the holder of an active~~ holding a current license shall ~~maintain on~~ file with the Commissioner both the address of the ~~licensee's~~ salesper-

son's or broker's principal place of business, if any, and a current residence address. ~~Every licensee shall notify the Commissioner within ten working days of any change of address on a form furnished by the Department, accompanied by a change fee.~~

~~C. When a licensee has made a complete application for the renewal of a license or a license change prior to expiration, the existing license remains in effect until the application has been fully acted upon by the Department. Upon denial of the application, it shall be unlawful for a person to act, or attempt to act, as a real estate or cemetery licensee.~~

F. Except as prescribed in A.R.S. §§ 32-2184, 32-2194.10, 32-2195.10, 32-2197.03 and 32-2198.01(D), every licensee shall, within 10 days of each occurrence, notify the Commissioner, in writing, of any change in information contained in the license certification questionnaire specified in subsection (A)(1)(a) through (A)(1)(d) and provide documentation pursuant to (A)(2).

~~H. A branch office license issued pursuant to A.R.S. § 32-2127 is not required if an office is established exclusively for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided lands. Operation of said office shall be under the direct supervision of the broker named in the application for approval to sell or lease subdivided or unsubdivided lands. The subdivision or unsubdivided land name shall be used concurrently with the licensed name of the broker on the specific properties of said office in a conspicuous and reasonable manner calculated to attract the attention of the public.~~

~~I. Fees charged by the Department of Real Estate shall be as follows:~~

~~1. Broker's examination fee, $50.00.~~
~~2. Broker's license fee, $125.00.~~
~~3. Broker's renewal fee, $125.00; except if the renewal is pursuant to A.R.S. § 32-2130(C), the fee is $135.00.~~
~~4. Salesperson's examination fee, $25.00.~~
~~5. Salesperson's license fee, $60.00.~~
~~6. Renewal fee for salesperson's license, $60.00; except if the renewal is pursuant to A.R.S. § 32-2130(C), the fee is $70.00.~~
~~7. Branch office broker's license fee, $35.00 for 12 months or less; $50.00 for 13 to 24 months; and $50.00 for renewal of a branch office broker's license.~~
~~8. Change fee, $10.00.~~
~~9. Temporary broker's license fee, $50.00.~~
~~10. Membership camping registration fee for salesperson or broker, $50.00.~~
~~11. Renewal fee for membership camping registration for salesperson or broker, $50.00.~~
~~12. Fee for processing fingerprints, $14.00.~~

~~R4-28-302. Salespersons and Brokers: Licenses; Requirements~~

~~A. A salesperson's license shall not be issued until the completed license application is submitted and the appropriate fee paid.~~

~~B. When a real estate or cemetery salesperson or an associate broker enters the employ of a real estate or cemetery broker, the employing broker shall notify the Commissioner of that fact and the licensee shall not be authorized to conduct business until such notification is received. This notification shall be made on a form furnished by the Department, signed by the broker and the licensee, and accompanied by a change fee. Submission of this notification by the broker shall mean that the broker agrees to assume responsibility for supervision of the licensee's business activity.~~

R4-28-302. Employing Broker and Designated Broker's License; Nonresident Broker

A. Any person applying for an employing or designated broker's license shall provide the following information:
1. The name, business address, telephone number, fax number, if any, license number and expiration date of the employing and designated broker licenses, and the signature of the designated broker;
2. The type of broker's license held;
3. The mailing address, if different than the business address;
4. The d.b.a. name, if applicable;
5. The bank name and location of each of the broker's trust accounts, if any;
6. The name and number of the trust account.

B. Partnership.
1. An applicant for a designated broker of a partnership shall:
   a. If the general partner is a partnership, be a natural person who is a partner of the general partner;
   b. If the general partner is a corporation, be a natural person who is a corporate officer of the corporate partner;
   c. If the general partner is a limited liability company, be a natural person who is a member or manager of the limited liability company;
   d. If a limited partner, not be eligible as a designated broker for the partnership.
2. In addition to the information provided in subsection (A) the partnership broker applicant shall, if applicable, provide
   a. The name, address and social security number of each partner, or the federal tax identification number if a legal entity, and the name of any other person with a beneficial or membership interest in the partnership;
   b. An agreement signed by all partners, stating the name of the partner appointed to act as the designated broker for the partnership;
   c. An affidavit signed by the designated broker stating:
      i. The partnership has applied for a broker's license in Arizona;
      ii. Each partner has read the complete application on the named partnership as submitted to the Department,
      iii. All the information contained in the application is true
      iv. Each general partner is qualified to do business in Arizona;
      v. That the name of the partnership complies with A.R.S. § 29-245 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing.
   d. A copy of the partnership agreement and any amendments;
   e. A copy of the Articles of Incorporation stamped "Received and Filed" by the Corporation Commission;
   f. A copy of the Articles of Organization stamped "Received and Filed" by the Corporation Commission;
   g. Any other information required by the Department to verify the applicant's qualifications.

C. Corporation. In addition to the information provided in subsection (A), a corporate broker applicant shall provide:
1. The name and address of each officer and director, and the name and address of each shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial or membership interest in the corporation;
2. The federal tax identification number of the corporation;
3. A copy of the Articles of Incorporation and any amendments stamped "Received and Filed" by the Corporation Commission. If more than 1 year has elapsed between the date the Articles were stamped "Filed" by the Corporation Commission and the application for the corporate license, a Certificate of Good Standing from the Corporation Commission may be required;
4. A corporate resolution stating that the designated broker was elected or appointed a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation;
5. An affidavit signed by the designated broker stating:
   a. The corporation has applied for a broker's license in Arizona;
   b. Each officer and director has read the complete application on the named corporation as submitted to the Department; and
   c. All the information contained in the application is true;
   d. That the name of the corporation complies with A.R.S. § 10-401 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. Each corporation is qualified to do business in Arizona.
6. Any other information required by the Department to verify the applicant's qualifications.

D. Limited liability company. In addition to the information provided in subsection (A), a limited liability company broker applicant shall provide:
1. The name and address of each member and manager, and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company;
2. The federal tax identification number of the limited liability company;
3. A copy of the Articles of Organization and any amendments stamped "Received and Filed" by the Corporation Commission. If more than 1 year has elapsed between the date the Articles were stamped "Filed" by the Corporation Commission and the application for the limited liability company license, a Certificate of Good Standing from the Corporation Commission may be required;
4. A company resolution signed by all members stating if management of the limited liability company is established as manager-controlled or member-controlled and the name of the member or manager appointed to act as the designated broker;
5. An affidavit signed by the designated broker stating:
   a. The limited liability company has applied for a broker's license in Arizona;
   b. Each member and manager has read the complete application on the limited liability company as submitted to the Department;
   c. All of the information contained in the application is true;
   d. A statement that the name of the limited liability company complies with A.R.S. § 29-602 and 4 A.A.C. 28, Article 10, and is not likely to be misleading or confusing; and
   e. The limited liability company is qualified to do business in Arizona.
6. A copy of the operating agreement and any amendments;
7. Any other information required by the Department to verify the applicant's qualifications.

E. Foreign entity. In addition to the requirements in this Section, the Department may require any of the following information from an entity applying for a broker's license if a partner, member, officer or director of the entity is domiciled in another state:
1. The agreement and plan of merger;
2. The Certificate of Good Standing;
3. The Certificate of Merger on file in the state in which the applicant is domiciled;
4. The Certificate of Merger on file with the Arizona Corporation Commission;
5. A filed and stamped Articles of Merger;
6. A filed and stamped application for registration of the foreign limited liability company or foreign corporation or partnership;
7. Any other information required by the Department to verify the applicant's qualifications.

F. Self-employed broker. In addition to the information provided in subsection (A), any person applying as a self-employed broker shall provide a sworn statement attesting that the applicant is the sole proprietor of the business.

G. If any information prescribed in subsections (A) through (F) changes, the designated broker shall, within 10 days after the change, file a supplemental statement in writing with the Department listing the change and include the appropriate fee, if any.

H. The designated broker shall:
1. Supervise a salesperson's or broker's business activity and be responsible for the acts of the associate brokers, salespersons and employees of the employing broker within the course of their employment;
2. Notify the Department on the Change Form within 10 days after a salesperson or broker leaves a broker's employment.

I. A broker's license shall not be used to enable a salesperson or associate broker nominally employed by the broker to establish and carry on a brokerage business if the broker's only interest is the receipt of a fee for the use of the license and the broker does not exercise supervision over the salesperson or associate broker.

J. Change of Designated Broker.
1. If the employing broker is changing its designated broker, the current designated broker shall submit a letter of resignation and return the designated broker's and the employing broker's licenses to the Department. If by partnership agreement, or corporate or company resolution, the designated broker is removed, the employing broker shall return the employing broker's and designated broker's licenses.
2. If the entity continues business without interruption, the incoming designated broker shall simultaneously with, or on the next business day following, the departure or removal:
   a. Complete, sign and submit the Change Form as prescribed in R4-28-303; and

b. If the entity is a corporation or limited liability company, submit a resolution appointing the new broker to act on its behalf; or

c. If the entity is a partnership, submit an amendment to the partnership agreement naming the new broker to act on its behalf or a new application, as applicable.

3. If the designated broker has not been fingerprinted, the broker shall submit a full set of fingerprints with the application and fee as required in A.R.S. § 32-2108.01.

K. Non-resident broker.

1. If a licensed non-resident broker maintains a principal office outside Arizona, the broker shall:
   a. Maintain a trust account or escrow account licensed and situated in Arizona for monies received from Arizona transactions;
   b. Maintain, in Arizona, copies of all documents pertaining to any Arizona transactions handled by the broker;
   c. Provide a written statement to the Department identifying the name, address and telephone number of the person residing in Arizona, such as a statutory agent or attorney, who has possession of the records;
   d. Identify the physical location of the records.
2. If a licensed non-resident broker employees a licensed salesperson or broker within the state, the broker shall:
   a. Establish an office in Arizona and appoint a branch manager;
   b. Provide a statement describing how the licensed employee shall be supervised.
3. A non-resident broker shall notify the Department within 10 days of any information changes.

~~R4-28-303. Brokers: Regulations; Duties~~

~~A. The holder of a broker's license may, during the term of that license, request inactivation of his broker's license and, upon filing the appropriate application and fee, be issued a salesperson's license. This procedure does not require passage of a salesperson's examination.~~

~~B. Except as prescribed in subsection (D), a broker's license shall not be issued to a salesperson until the broker who previously employed said licensee files an appropriate notice on a form furnished by the Department, accompanied by a change fee.~~

~~C. An employing broker shall notify the Department within ten days after a licensee leaves his or her employment. Such notification shall be given on an appropriate form to the Department, accompanied by a change fee. The Commissioner shall have authority, upon written request of the licensee and upon notification to the employing broker, to sever such licensee from employment on Department records prior to receipt of the appropriate form. A change fee will be charged for this service.~~

~~D. A broker who is employed by another broker shall not be licensed as a salesperson except after inactivation of the broker's license pursuant to these rules. The license of the employed broker shall be issued using the following words: "Associate Broker."~~

~~E. Copies of employment status forms for all present and former employees shall be retained by the employing broker in readily accessible form for a period of five years.~~

~~F. Any broker employed by the business entity and acting as a branch office manager under A.R.S. § 32-2127 may perform the functions and duties of the sole proprietor broker or designated broker in connection arising out of the branch office if authorized to do so in writing by the sole proprietor or designated broker. The authorization shall be filed with the Commissioner within ten days and shall be retained in the principal office of the broker for five years.~~

~~G. A broker shall not permit the use of his or her license to enable salespersons nominally employed by the broker to establish and carry on a real estate or cemetery brokerage business wherein if the broker's only interest is the receipt of a fee for the use of the broker's license by others and the broker does not exercise actual supervision over the salespersons.~~

~~H. The employing broker shall assume responsibility for the acts of all associate brokers, salespersons and other employees acting within the course of their employment.~~

R4-28-303. License Renewal; Reinstatement; License Changes

A. Renewal.

1. If a salesperson or broker applies for a license renewal before expiration, the existing license shall remain in effect until the application has been approved or denied by the Department.
   a. If the application is deemed administratively incomplete and the applicant has not provided the requested information within the resubmission period, the license will expire on the license expiration date.
   b. If the application is denied, the person shall not act, nor attempt to act, as a salesperson or broker once the application has been fully acted upon.
2. Any salesperson or broker applying for a license renewal shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application for License Renewal form, if not already provided on earlier applications:
   a. Any change or correction to the applicant's licensing information;
   b. If the renewal application is late;
   c. The date and signature of the designated broker, or authorized branch office manager, if the renewal is for an active license. If the renewal is signed by the authorized representative, a copy of the authorization shall be attached;
   d. The signature of the applicant attesting to the application information.

B. Late renewal. In addition to the information required in subsection (A) any person applying for a late renewal shall submit the following information on an Unlicensed Activity form:

1. The applicant's legal name and d.b.a. name, if any;
2. The name of the employing broker and designated broker, if other than the applicant;
3. The date of the application;
4. The type and expiration date of the license previously held by the applicant;
5. If the applicant conducted activities requiring a license after license expiration or without being properly employed by a broker;

C. Unlicensed activity. A person who has conducted activities requiring a current and active license while not properly licensed shall, upon request, submit:

1. A copy of any offer or contract to sell, lease, exchange, transfer, or manage real estate, cemetery property or membership camping contracts;
2. A written explanation of why the unlicensed activity occurred, attesting that there are no unreported transac-

tions, and that the applicant is aware of the provisions in A.R.S. §§ 32-2121, 32-2130(B), 32-2153, and 32-2160.01.

3. A copy of all listing agreements, buyer broker employment agreements, purchase contracts, escrow settlement statements, management agreements, rental agreements, and leases executed while not properly licensed;
4. Documentation listing all compensation received or to be received by the applicant, the designated broker and employing broker resulting from the applicant's activities;
5. The person shall attest that activities requiring a license shall not be conducted until a current and active license is issued to the person.

D. Reinstatement.

1. Any salesperson or broker applying for license reinstatement shall, in addition to the requirements in R4-28-301(A), submit the following information on the Application For Reinstatement form:
   a. The type of license and status requested;
   b. The applicant's legal name, business address, and telephone number;
   c. If the license was suspended, canceled, terminated, or revoked, and the date of and reason for the action;
   d. The license number of the applicant;
   e. The mailing address, if different than the business address;
   f. The name, address and telephone number of the employing broker, if applicable;
   g. The employer's trade or d.b.a. name, if any;
   h. The date of the application;
   i. The signature of the applicant attesting to the above information and that the applicant is aware of the provisions in A.R.S. §§ 32-2132, 32-2153, and 32-2160.01.
2. If the license status was active at the time of suspension, cancellation, revocation, or termination, the applicant may be required to submit an Unlicensed Activity Form and supporting documents.

E. License Changes. A salesperson or broker shall notify the Commissioner of the following changes:

1. In writing or on a Change Form, whichever is appropriate:
   a. The type of change being made;
   b. The legal name, address and telephone number of the salesperson or broker;
   c. The prior name of the person, if changing name;
   d. The prior address of the main or branch office, if changing address;
   e. The salesperson's or broker's license number, expiration month and year;
   f. The date of the application and signature of the salesperson or broker.
2. In writing, within 10 days of the change:
   a. Personal name, including proof of the change, and
   b. Personal address.
3. On a Change Form, within 10 days of the change:
   a. Active to inactive status;
      i. The legal name and fictitious name, if any, of the severing broker;
      ii. The date and signature of the severing broker.
   b. The employing broker's business address;
   c. The business mailing address, if different than the business address;
   d. The transfer between employer's offices by salesperson or associate broker;
   e. The appointment of temporary broker due to designated broker's death or incapacity;
   f. The close of branch office;
   g. The branch office manager;
   h. Disclosure of certification information;
   i. Opening, closing or relocation of a broker's trust account.
4. On a Change Form, and obtain approval from the Commissioner before conducting business. The existing license shall remain in effect until the application has been approved or denied.
   a. The broker's business name;
   b. The employing broker;
      i. The legal name and fictitious name, if any, of the severing and hiring brokers;
      ii. The date and signatures of the severing and hiring brokers.
   c. Inactive to active status;
      i. The legal name of the hiring broker;
      ii. The date and signature of the hiring broker.
   d. Designated broker by an entity;
   e. Adopting, changing or relinquishing professional corporation and professional limited liability company license status;
   f. Membership of a professional corporation and professional limited liability company or in the license status of a member;
   g. Broker change of status to or from associate broker;
   h. Designated broker or entity change from resident to non-resident broker's license;
   i. Designated broker or entity change from non-resident to resident broker's license.
5. Within 30 days of any change in structure of licensed entity the name of the:
   a. Director, officer and person holding or controlling 10% or more of the shares if a corporation;
   b. Partner if a partnership;
   c. Member or manager if a limited liability company.
6. If in making a license change the previous issued license is not returned, the salesperson or broker or the designated broker, if applicable, shall submit a written statement explaining why it is not being returned.

F. In addition to the information required in subsection (D)(1), a salesperson or associate broker shall submit the following information when the change is in a:

1. Professional corporation.
   a. The name of the professional corporation that reflects the full or last name of each officer, director and shareholder of the professional corporation as it appears on the Articles of Incorporation.
   b. The name and business address of each officer, director and shareholder in the corporation and a written statement that each holds a current and active real estate, cemetery or membership camping license, as applicable;
   c. A copy of the Articles of Incorporation stamped "Received and Filed" by the Corporation Commission.
      i. The Articles of Incorporation shall state that its sole purpose is to provide professional real estate, cemetery or membership camping ser-

vices, or real estate, cemetery and membership camping services.

ii. If more than 1 year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Corporation Commission and the application for the license as a professional corporation, a Certificate of Good Standing from the Corporation Commission may be required.

2. Professional limited liability company.

a. The name of the professional limited liability company that reflects the full or last name of each member of the professional limited liability company as it appears on the Articles of Organization;

b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate, cemetery or membership camping license, as applicable;

c. A copy of the Articles of Organization stamped "Received and Filed" by the Corporation Commission.

i. The Articles of Organization shall state that its sole purpose is to provide professional real estate, cemetery or membership camping services, or real estate, cemetery and membership camping services.

ii. If more than 1 year has elapsed between the date the Articles of Organization were stamped "Filed" by the Corporation Commission and the application for the license as a limited liability company, a Certificate of Good Standing from the Corporation Commission may be required;

d. A copy of the operating agreement, as amended.

G. Administrative severance.

1. A salesperson or broker may request the Department to immediately sever the salesperson's or broker's license from the employing broker.

a. After notifying the designated broker, the salesperson or broker shall provide the following information on a Request for Administrative Severance form:

i. The name and license number of the applicant,

ii. If the applicant is a salesperson or an associate broker,

iii. The name of the employing broker from whom the license is being severed,

iv. The reason why the applicant requests to be administratively severed,

v. The date and signature of the applicant.

b. The applicant shall submit the severance form and a stamped envelope pre-addressed to the broker from whom the license is being severed.

c. After receipt of the severance form, the Department shall administratively sever the license and mail a copy of the severance to the employing broker.

2. After a license has been administratively severed, another employing broker may hire the applicant by submitting a Change Form and fee.

~~R4-28-304. Partnerships: licenses; requirements~~

~~A. The following information and documents must be furnished to the Department where the applicant desires a broker's license for a partnership:~~

~~1. The names and addresses of each partner, director and managerial employee, and the names of any other persons with a beneficial or membership interest in the partnership.~~

~~2. An agreement signed by all partners, stating the name of the member designated broker.~~

~~3. An affidavit from each partner stating that each is aware of the fact the named partnership has applied for a license to sell real estate in the state of Arizona, that each Each has read the complete file on the named partnership as submitted to the Commissioner, and that all of the facts contained therein are true. More than one partner may join in making a single affidavit.~~

~~4. An affidavit stating whether the applicant or any other person referred to in subsection (A), paragraph (1) of this rule has been convicted of any misdemeanor or felony, and whether any such person has previously had a real estate or cemetery license revoked or suspended.~~

~~B. If, after a license has been issued, there is a change in any of the facts submitted, the designated broker shall file a verified supplemental statement in writing, giving notice of the change to the Commissioner within ten (10) days after the change.~~

~~C. In addition to the above, an application for a partnership license shall include any information the Commissioner may request concerning the honesty and character of persons referred to therein and shall be filed by the designated broker.~~

~~D. The designated broker shall assume responsibility for the acts of the partnership, the associate brokers, salespersons and employees of the partnership. If the designated broker has not been fingerprinted, he or she must be fingerprinted prior to application approval pursuant to A.R.S. § 41-1750(G). All requirements must be completed before the application can be accepted and the partnership licensed to act as a real estate broker in Arizona.~~

R4-28-304. Branch Office; Branch Office Manager

A. The designated broker shall submit the following information for each branch office on the Application For Branch Office form:

1. The name, date and signature of the designated broker;
2. The license number and expiration date of the employing broker;
3. The name, address, telephone and license number of the main office;
4. The type of employing broker's license;
5. The employing broker's fictitious name, if applicable;
6. The address, telephone number, and fax number, if any, of the branch office;
7. The name and license status of the salesperson or broker who is the branch office manager and authority granted.

B. Branch office manager. An associate broker or salesperson acting as a branch office manager may perform any of the following duties of the designated broker at the branch office if authorized in writing by the designated broker. This designation shall not relieve the designated broker from any responsibilities. Upon change of the branch manager, the designated broker shall submit a new authorization to the Department within 10 days of the change and shall retain a copy in the broker's main office for 5 years.

1. If the branch manager is an associate broker, the associate broker may, when dealing with branch office transactions:
   a. Review and initial contracts,
   b. Supervise the activity of salespersons and associate brokers,
   c. Hire or sever a salesperson or associate broker,
   d. Sign compensation checks,
   e. Be a signer on the branch office trust account and property management trust account,
   f. Write checks from the broker's trust accounts,
   g. Be responsible for the handling of all trust account funds administered by the branch manager.
2. If the branch manager is a salesperson, the salesperson may, when dealing with branch office transactions:
   a. Perform office management tasks that are not statutory duties of the employing broker,
   b. Be a signer on the broker's trust account and property management trust account.

C. Temporary office. An additional license is not required for a temporary office established for the original on-site sale of properties within the immediate area of a subdivision or unsubdivided land.
1. Operation of the temporary office shall be under the supervision of the broker named in the application for approval to sell or lease the subdivided or unsubdivided land.
2. The subdivision or unsubdivided land name shall be displayed concurrently with the licensed name of the broker in a conspicuous manner to attract the attention of the public.

~~R4-28-305. Corporations: licenses; requirements~~

~~A. The following information and documents must be furnished to the Department where the applicant desires a broker's license for a corporation.~~
~~1. The names and addresses of each officer, director and managerial employee, and the names and addresses of each stockholder controlling or holding more than ten (10) percent of the issued and outstanding common shares or ten (10) percent of any other proprietary, beneficial or membership interest in the corporation.~~
~~2. Certification that a copy of the Articles of Incorporation has been received and filed by the Corporation Commission. A copy of the Articles must be supplied to the Department. If more than one year has elapsed between the original filing with the Corporation Commission and the application for the corporate license, a Certificate of Compliance and Good Standing from the Corporation Commission must also be submitted.~~
~~3. A corporate resolution stating that the designated broker was elected or appointed a corporate officer, naming the office held, and stating that the individual was appointed to act as designated broker for the corporation.~~
~~4. An affidavit from each officer or director to the effect that each is aware of the fact the named corporation has applied for a real estate or cemetery broker's license in the state of Arizona, has read the complete file on the named corporation as submitted to the Commissioner, and all of the facts contained therein regarding its officers, directors and stockholders are true. More than one officer or director may join in making a single affidavit.~~
~~5. An affidavit disclosing whether the applicant or any other person referred to in subsection (A), paragraph (1) of this rule has been convicted of any misdemeanor or felony, and whether any such person has had a real estate or cemetery license revoked or suspended.~~

~~B. If, after a license has been issued, there is a change in any of the facts submitted the designated broker shall file a verified supplemental statement in writing, giving notice of the change to the Commissioner within ten (10) days after the change.~~

~~C. In addition to the above, an application for a corporate license shall be completed in detail, including any information the Commissioner may request to attest to the honesty and good moral character of persons referred to therein, and shall be filed by the designated broker who will assume responsibility for the acts of the corporation, the associate brokers, salespersons and employees of the corporation. If the designated broker has not been fingerprinted, he or she must be fingerprinted prior to application approval pursuant to A.R.S. § 41-1750(G). All requirements must be completed before the application can be accepted and the corporation licensed to act as a real estate broker in Arizona.~~

R4-28-305. Temporary License, Certificate of Convenience

A. Any individual applying for a temporary cemetery salesperson's license, a temporary broker's license, or a membership camping salesperson's certificate of convenience shall submit the following information and appropriate fee to the Department:
1. The type of license requested;
2. The name, address, telephone number, social security number and date of birth of the applicant;
3. The mailing address if different than subsection (A)(2);
4. The name, business address, telephone number, fax number, if any, and license number of the employing broker;
5. The branch office number, address, telephone number, and fax number, if any, where employed, if different than subsection(A)(4).

B. The designated broker shall submit an affidavit pursuant to A.R.S. § 32-2134 or 32-2134.01 for:
1. A temporary cemetery license stating that the applicant has been trained in cemetery and contract law,
2. A certificate of convenience stating that the applicant will be trained in membership camping and contract laws;

C. In addition to the information required in subsection (A), an applicant for a temporary broker's license pursuant to A.R.S. § 32-2133 shall submit the following information to the Department:
1. A copy of the death certificate or notice, if applicable, or a letter advising the Department of the broker's illness or disability;
2. A letter from the surviving spouse, or attorney representing the broker or the broker's family, personal representative, or other responsible party, appointing an individual to serve as a temporary broker for 90 days.

ARTICLE 4. EDUCATION; ~~EXAMINATIONS, SCHOOLS, INSTRUCTORS~~

R4-28-401. Prelicensure Education; Requirements; ~~Curricula~~ Waiver

~~A. Every applicant for an original real estate broker's or salesperson's license shall file on a form furnished by the Department a certification of the following:~~
~~1. If an applicant for a salesperson's license, completion of 45 classroom hours or its equivalent.~~

~~2. If an applicant for a broker's license, completion of 90 classroom hours or the equivalent. Courses offered to comply with the educational requirements of a salesperson's license will not be considered in computing the classroom hours required for a broker's license.~~

~~B. The time allocated by any school for examination shall not be included as classroom hours for the purposes of satisfying applicable requirements.~~

~~C. The course of education in real estate subjects to qualify an applicant for a license shall be prescribed by the Commissioner and subject to change as the Commissioner deems necessary. Copies of the revised school curricula shall be available upon request to the Department.~~

~~D. The course of study offered by an approved school shall closely follow the guidelines of the education curricula in reference to subject and requisite hours as promulgated by the Commissioner.~~

~~E. A real estate salesperson, within 90 days after issuance by the Department of an original license, shall provide certification evidencing completion of six hours of continuing education in real estate contract law and contract writing. Such course shall include participation by licensees in the drafting of contracts to purchase, listing agreements and lease agreements.~~

~~F. A license renewal applicant shall provide certification evidencing compliance with continuing education requirements upon submission of an application for a license.~~

~~G. Compliance with the continuing education requirements means that a broker or salesperson, licensed under any status, must complete 24 classroom hours of real estate education of which three hours must be devoted to each of the following areas:~~

~~1. Arizona real estate law,~~
~~2. The Commissioner's rules,~~
~~3. Agency law,~~
~~4. Contract law,~~
~~5. Fair housing issues, and~~
~~6. Environmental issues.~~

A. Any individual applying for a real estate license shall either:
1. Complete the required 90-hour prelicensure education as prescribed in A.R.S. § 32-2124; or
2. Except for the 27-hour Arizona specific course, apply for and be granted a waiver of the prelicensure courses.

B. If the waiver request is based on prior education, the applicant shall submit a letter to the Commissioner that includes:
1. The name, mailing or business address, daytime telephone number, and signature of the applicant;
2. The type of license sought;
3. The name and address of the school;
4. The course description or curriculum including credit hours; and
5. Completion of 1 or more real estate courses. Acceptable evidence includes;
   a. A signed letter from a school representative, or official transcript from a college or university, which identifies:
      i. The starting and ending dates of the course;
      ii. The number of semester, quarter or credit hours awarded per course;
      iii. Evidence that the course examination was satisfactorily passed.
   b. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

C. If the waiver request is based on experience, or both education and experience, the applicant shall submit a letter to the Commissioner that includes:
1. A detailed resume covering the previous 10 years, indicating duties performed and the name and telephone number for each employer; and
2. An original certified license history, including disciplinary action if any, from the real estate regulatory agency in each state in which the applicant is currently licensed and from any other state in which the applicant was licensed during the preceding 10 years; and
3. One or more of the following:
   a. Completion of 1 or more real estate courses. Acceptable evidence includes a signed letter from a school representative, or official transcript from a college or university, which identifies:
      i. The starting and ending dates of the course;
      ii. The number of semester, quarter or credit hours awarded per course;
      iii. Evidence that the course examination was satisfactorily passed.
   b. Evidence of more than 5 years experience in a real estate related field;
   c. Evidence of course completion provided as part of a certified license history from a state in which the applicant is currently or was previously licensed.

D. The Department shall provide a copy of the prelicensure course content to any person requesting it.

E. No person shall receive credit for more than 10 hours of prelicensure education classes per day.

R4-28-401.01 Continuing Education Requirements; Waiver

A. Continuing education requirements.
1. Any individual applying for real estate license renewal shall complete 24 credit hours from a school as prescribed in R4-28-403, of which a minimum of 3 hours are completed in each of the following categories:
   a. Agency law;
   b. Contract law;
   c. Commissioner's standards;
   d. Real estate legal issues.
2. The Department may require an individual to obtain credit hours in specific legal issue areas based upon significant issues in the real estate community.
3. Continuing education credit may be granted for an unapproved course if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the course approval requirements prescribed in R4-28-403.
4. The equivalent subject matter hours within a 90-hour prelicensure course, if taken since the last license renewal, may be substituted for the 24-hours of continuing education required in subsection (A)(1).
5. If any change in the continuing education course requirements falls within a renewal applicant's license period, the renewal applicant may fulfill the continuing education requirements by satisfying the requirements in effect at the beginning or the end of the preceding license period.

~~H.~~B. Continuing education waiver.
1. Pursuant to A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement when a ~~licensee~~ salesperson or broker submits a written request to the Commissioner and shows good cause for ~~such a~~ the waiver, ~~including, but not limited to, the following case~~ such as when:

a. ~~When a~~ A person employed by the state ~~of Arizona, who has surrendered his or her license due to possible conflict of interest,~~ or political subdivision establishes to the satisfaction of the Commissioner that ~~his or her~~ the person's employment during the prior license period involved real estate-related matters.~~;~~

b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement.

c. Any other extraordinary circumstance exists or is demonstrated;

d A substitution for education is demonstrated;

e. An approved real estate instructor requests a waiver for a course the instructor has taught.

2. If the Commissioner grants a salesperson or broker additional time to complete the continuing education hours under a conditional waiver, the salesperson or broker shall complete the continuing education hours within the time-frame prescribed in the waiver, unless additional time is granted.

~~I. Implementation~~

~~1. All licensees whose real estate licenses expire prior to April 1, 1995, may satisfy the continuing education requirements by completing hours and subjects set forth in R4-28-401(G)(1)-(4).~~

~~2. All licensees whose real estate licenses expire on, or after April 1, 1995, and who completed 12 or more hours of continuing education prior to before April 1, 1995, may satisfy the continuing education requirements by completing the hours and subjects set forth in R4-28-401 (G)(1)-(4).~~

~~3. All real estate licensees whose licenses expire after March 31, 1995, and who have not completed at least 12 hours of continuing education prior to April 1, 1995, shall satisfy the continuing education requirements set forth in R4-28-401(G)(1)-(6) subsection (G)(1) through (G)(6), except that, pursuant to A.R.S. § 32-2130(A), the Commissioner shall waive the continuing educational requirements of R4-28-401(G)(5) and (6) for any real estate licensee who files an affidavit stating that prior to June 1, 1995, the licensee was unable to fulfill those course requirements due to insufficient advance notice of the effective date of the requirements or non-availability of the courses in the county in which the licensee resides.~~

C. No person shall receive credit for more than 9 hours of continuing education classes per day.

R4-28-402. License Examinations

A. ~~A~~ The Department shall hold, or contract for, at least 1 state licensing examination ~~will be held in~~ each week ~~calendar month and at such other times as the Commissioner deems necessary~~.

~~B. Applications for an original license shall be accompanied by an examination fee and certification of completion of educational requirements. The name of applicants shall be placed on an eligible applicant list in the order in which applications were approved. Applicants shall be scheduled accordingly to attend the next examination at which space is available.~~

~~C.~~B. ~~Examination papers written by an applicant~~ No state license examination shall ~~not~~ be returned to the applicant. ~~An~~ The applicant ~~will~~ shall be notified ~~by mail~~ in person of the results of the examination by the words "passed" or "did not pass" ~~only~~. The results notification for an applicant who did not pass the examination shall also show the score for the examination and the relative score for each content area.

~~D. Upon successful completion of the examination, the applicant shall pay the appropriate licensing fee and file a bond, if applicable, within one year from the date of the examination. Failure to satisfy the requirements set forth in this subsection within the specified time will result in cancellation of the application and forfeiture of fees.~~

~~E.~~C. ~~The grant of approval~~ Qualifying to take or passing a license examination does not constitute a waiver of the Commissioner's right to deny issuance of a license if grounds exist pursuant to A.R.S. § 32-2153 or any other applicable statute.

R4-28-403. Real Estate Schools~~: Licensing; Regulation~~ Requirements, Course and Instructor Approval

A. ~~Licensing. Before any school may engage in or transact any business offering a course of study for completion of the education requirements leading to licensure of real estate applicants or to license renewal requirements under Arizona real estate law, it must file an application for a Certificate of Approval to operate a school with the Arizona Department of Real Estate. A community college or university, which is accredited by an accrediting organization which is approved by the Council on Post Secondary Accreditation or the U.S. Department of Education, offering courses in real estate is exempt from the requirements of R4-28-403(A)(1).~~ Certificate of School Approval. Except for a community college or university accredited by the Council on Post Secondary Accreditation or the U.S. Department of Education offering courses in real estate, any school offering a course of study for original or renewal licensure of a real estate applicant shall first apply for and be issued a Certificate of Approval from the Department. The school's authorized representative shall provide the following information on the Certificate of Approval form:

1. ~~Such application shall be made on forms approved by the Arizona Department of Real Estate and shall contain~~:

~~a.~~ ~~Name,~~ The name, address, ~~and~~ telephone number, and fax number, if any, of the school; ~~owner. If the holder of any ownership interest in the school is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of such interest of each principal in the entity. For the purpose of this regulation, a "principal" means any person or entity having a ten percent or more financial interest, or, if the legal entity is a trust, each beneficiary of the trust holding a ten percent or more beneficial interest~~

2. The name of the owner and d.b.a. name, if any;

3. If the owner is a sole proprietorship, partnership, trust, limited liability company or corporation;

4. The name, address, telephone number and percentage ownership of each person, entity or beneficiary holding or controlling 10% or more financial interest in the school.

5. The name of each individual authorized to act on behalf of the school and sign continuing education certificates and prelicensure verifications;

6. ~~b. Name,~~ The name, business address, and telephone number of all current and prospective administrators, directors and instructors~~.~~;

7. ~~c. For~~ In addition to the information required in R4-28-301(A), each school owner, administrator, director

and instructor~~,~~ shall provide a statement of ~~the~~ individual's:

a. ~~i.~~ ~~Educational background~~ Education;
b. ~~ii.~~ ~~Past teaching~~ Teaching experience; and
c. ~~iii.~~ Employment history~~;~~.
~~iv. Prior criminal convictions;~~
~~v. Whether a real estate license is held;~~
~~vi. Whether any professional license has been suspended or revoked;~~
~~vii. Fingerprints, if the Department does not have a fingerprint exemplar on file~~.

~~d. The Commissioner may require any additional information which may be reasonably necessary to process such application.~~

~~e. A true statement of the provisions made for maintenance of facilities, equipment and materials which will be used for the stated program. All facilities shall meet applicable state and local laws concerning safety and zoning.~~

8 If the owner is a partnership, a copy of the partnership agreement naming the partner authorized to act on its behalf.

9. If the owner is a corporation or limited liability company, a copy of:
   a. A corporate or company resolution or operating agreement naming the officer, member or manager authorized to execute the Certificate of Approval form;
   b. A current Certificate of Good Standing from the Corporation Commission;
   c. A copy of the latest annual report on file with the Corporation Commission
   d A copy of the Articles of Incorporation or Organization, as amended.

10. The location of school registration and licensing certification records.

B. ~~Filing course information with Department. An Application for Certificate of Course Approval must be filed with the Arizona Department of Real Estate. Such application shall include:~~ Certificate of Course Approval. The school's authorized representative shall submit the following information:

1. ~~School,~~ The school name, address, ~~and~~ telephone number, and fax number, if any;
2. ~~Authorized~~ The authorized representative's name, title, and signature;
3. ~~Course~~ The title of the course ~~or seminar title~~;
4. ~~An~~ A detailed outline of course material content, ~~including time allotments for topics in 50 minute increments~~ that clearly lists the subject matter to be covered;
5. ~~Date~~ The date, time and location of the anticipated presentation, if known;
6. ~~Number~~ The number of credit hours requested~~;~~. The time allocated by a school for examination shall not be included in calculating credit hours if used for overall evaluation.
7. ~~Category~~ The category of approval requested;
8. ~~Definition~~ A definition of segments if the course is to be offered in part ~~as well as~~ and in its entirety;
9. If video or audio tapes will be used as instructional aids, and what percentage of the class they will comprise;
9.10. ~~Instructor's name(s).~~ The name of every instructor who will teach the course;
11. The date of the application.

C. Instructor Approval. Any person wishing to teach an approved real estate course shall have at least 1 of the following in the proposed subject area:
   1. A bachelor's or master's degree in an area traditionally associated with real estate, such as business, law, economics, marketing or finance;
   2. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of Appraisal Institute, and completed 2 years of post-secondary education from an accredited institution;
   3. Experience in real estate, and a bachelor's degree in education with a valid certificate issued within 15 years of the date of application for instructor approval;
   4. A real estate salesperson's or broker's license or be an employee or former employee of a regulatory agency;
   5. A Distinguished Real Estate Instructor designation, with credentials in the specific subject;
   6. At least 1 year of supervised internship with a school approved by the Department and at least 3 years real estate or specific subject experience;
   7. Other education or experience determined by the Commissioner to qualify as an instructor.

~~C.~~D. ~~Student records.~~ The school ~~must~~ shall maintain a record for 5 years of each student ~~who attended such~~ attending the school ~~for a period of five years~~. ~~Such~~ The record shall include:

1. ~~Name~~ The name and address of each student~~;~~.
2. ~~Date(s)~~ The dates of attendance~~;~~.
3. ~~Title(s) of course(s) taken~~ The title of each course taken~~;~~.
4. ~~Number of hours;~~ The course number, category and credit hours awarded.
5. ~~Final~~ The final grade or score in ~~pre-license~~ each prelicensure course~~s~~.
6. The original signature roster for each course or course segment taught.

~~D.~~E. ~~Disclosures to students.~~ Any agreement or application to enroll presented to a student by any school representative shall be signed by the prospective student and shall include the following, in bold type and capital letters:

1. ~~Title of~~ The course or course segment title ~~or courses~~ within a curriculum~~;~~.
2. ~~Total classroom~~ The total credit hours ~~(total~~ applicable for licensure or renewal~~)~~;.
3. ~~Price~~ The cost of each course~~;~~.
4. A ~~true and complete~~ statement of the refund policy~~;~~.
5. A ~~true and complete~~ statement of any job placement services.

~~E.~~F. ~~Job placement services. Job~~ The school may advertise job placement services ~~may be advertised~~ only if:

1. Student referrals result from direct contact between the school placement service and prospective employers~~;~~.
2. Documented evidence of student referrals ~~shall be~~ is maintained and ~~shall~~ includes:
   a. Referrals to prospective employers per student~~;~~.
   b. Results of referrals~~;~~.
   c. Final placement or other disposition.
3. Lists of employers given to graduates ~~will~~ are not ~~be~~ considered a placement service.

~~F. Reports to Department. A report containing the following information shall be submitted to the Department at the end of each calendar year:~~

~~1. Total enrollment during the preceding calendar year of:~~

~~a. Sales pre-license students;~~
~~b. Broker pre-license students;~~
~~c. Continuing education students;~~
~~2. Attendance recordkeeping procedure;~~
~~3. Total number of employees, including staff, instructors and representatives;~~

~~G. Advertising.~~
~~1. Claims or representations contained in the advertising shall be accurate.~~
~~2. Advertising shall fully state factual material so as to neither misrepresent the facts nor create misleading impressions.~~
~~3. All printed advertising will include the school name, address and phone number.~~

~~H. Powers and duties of the Commissioner to make investigations. The Commissioner on his own motion may, and upon a verified complaint in writing shall, investigate the actions of any school, owner, administrator, director or instructor acting on behalf of the school and may at any time examine the books and records of said school used in connection with the offering of approved courses.~~

G. Complaints. The Commissioner may, and upon a verified complaint in writing shall, investigate and observe the action of any school, owner, administrator, director or instructor acting on behalf of the school and may examine the books and records of the school in connection with the offering of approved courses.

~~I. Grounds for denial, suspension or revocation of Certificate of Approval to operate a school or Certificate of Course approval.~~
~~1. The Commissioner may deny, suspend or revoke a Certificate of Approval to Operate a School or a Certificate of Course Approval issued under the provisions of this regulation if it appears that any school, owner, administrator, director or person acting on behalf of the school in the performance of or attempt to perform any acts authorized by such certificate or approval, has:~~
~~a. Failed to submit all required forms as set forth in this rule 30 days prior to offering real estate education courses;~~
~~b. Made any false or misleading promises or misrepresentations of material fact to a student, a prospective student, or to the Department of Real Estate;~~
~~c. Authorized the distribution of publications or advertisements of any false material statement or representation concerning the operation of a real estate school or the offering of a real estate education course;~~
~~d. Used or advertised the term "approved real estate school", or "approved real estate course" without prior Real Estate Department certification;~~
~~e. Failed or refused upon demand to produce any document, book, or record concerning real estate students for inspection by the Commissioner or his representative;~~
~~f. Failed to maintain a complete record of each student's attendance;~~
~~g. Issued false certification of real estate course attendance to any student;~~
~~h. Violated any Order of the Commissioner of Real Estate or any of the provisions of A.R.S. Title 32 Chapter 20 or any rules promulgated by the Commissioner of Real Estate.~~
~~2. The Commissioner may suspend, revoke or deny a Certificate of Approval to Operate a School or a Certificate of Course Approval if it appears that any school owner, administrator or director has:~~
~~a. Procured or attempted to procure a certificate pursuant to the provisions of this rule for himself or another by fraud, misrepresentation or deceit or by filing an application which is false or misleading;~~
~~b. Been convicted of a felony, forgery, theft, theft by extortion, extortion, conspiracy to defraud, or a crime of moral turpitude.~~

H. Change in school, course or instructor. Each school owner, operator, director and instructor shall:
1. Provide a written notice and supporting documentation within 10 days of any:
a. Change of personal name or address,
b. Change of business address,
c. Change of business mailing address,
d Closing a school.
e. Disclosure of certification information pursuant to R4-28-301(A),
2. Provide a written notice 30 days before holding a new course;
3. Provide a written notice of the date, time and location of a previously approved course within 14 days before the presentation;
4. Provide a written notice and supporting documentation within 30 days after any change in structure of a licensed entity, including any change of a:
a. Director, officer and person holding or controlling 10% or more of the shares if a corporation;
b. Partner if a partnership;
c. Member or manager if a limited liability company.
5. Obtain approval from the Commissioner before conducting business when:
a. Changing a business name;
b. Establishing a school location;
c. Changing the course content;
d. Changing the course length;
e. Offering a new course.
6. Provide written notice as soon as practical of a last minute change of instructor due to illness or emergency.

J. Hearing.
~~1. Upon the Commissioner's denial, suspension or revocation of a Certificate to Operate a School, or Certificate of Course Approval, a hearing may be requested in accordance with the provisions of A.R.S. Title 32, Chapter 20, Article 3. Rules of practice and procedure for such hearings and rehearings shall be as provided in Article 13 of these rules (R4-28-1301 through R4-28-1313).~~

ARTICLE 5. ADVERTISING

~~**R4-28-501. Advance fee rental: duties; requirements**~~
~~A. All licensees who act as "advance fee rental agents" shall make a written registry of all advertisements published, together with the address of the property advertised, the name of the party who offered the property for rent, and his or her telephone number, if any. Said register shall be retained by the broker for a period of five years.~~
~~B. An advance fee rental agent shall not refer a prospective tenant to a rental listing unless the availability of the listing has been verified within three calendar days of the referral.~~
~~C. No rental information shall be furnished a prospective tenant unless express authorization to offer said property for rent has been given by the owner or his authorized agent. Such authorization may be in the form of either a written statement~~

~~from the owner or his authorized agent or a sworn statement from the rental agent that he received verbal authorization from the owner or the owner's authorized agent. Record of such authorization shall be retained for a period of not less than five years.~~

R4-28-502. Advertising by ~~licensee~~ a Licensee

A. A ~~licensee~~ salesperson or broker acting as an agent shall not advertise property in a manner which implies that no ~~licensee~~ salesperson or broker is taking part in the offer for sale, lease or exchange.

B. ~~The Commissioner may refuse to issue licenses to entities desiring to operate under names he determines to be potentially misleading or detrimental to the public interest.~~ Any salesperson or broker advertising the salesperson's or broker's own property for sale, lease or exchange shall disclose the salesperson's or broker's status as a salesperson or broker and as the property owner in the advertisement.

C. ~~Advertising of any service for which a license is required shall not be under the name of a salesperson unless the name of the employing broker is also set forth.~~ All advertising shall contain accurate claims and representations, fully state factual material and shall not misrepresent the facts or create misleading impressions.

D. ~~All advertising by licensees, including, but not limited to, newspapers, magazines, circulars and business cards, shall include either the name in which the employing broker's license is held or the fictitious name contained on the real estate or cemetery license.~~ Any advertising of Department approved courses shall include the school name, address and telephone number.

~~E.~~E. ~~In all advertisements the lettering used for the~~ All advertising shall include either the name in which the employing broker's license is held or the fictitious name contained on the license certificate. The lettering used for the name of the employing broker shall appear in a clear and ~~manner which is~~ conspicuous ~~and reasonably calculated~~ manner to attract the attention of the public.

~~F.~~F. All advertising shall be ~~under the direct supervision of the employing and, if applicable,~~ supervised by the designated broker or the school owner, as applicable.

G. A licensee shall not use the term "acre," either alone or modified, unless referring to an area of land representing 43,560 square feet.

~~G.~~H. ~~Prior to~~ Before placing or erecting ~~any~~ a sign giving notice that specific property is being offered for sale, lease, rent or exchange, a ~~licensee~~ salesperson or broker ~~must~~ shall secure the written consent of the property owner, and ~~any such~~ the sign shall be promptly removed upon request of the property owner.

~~H.~~I. The provisions of subsections ~~(D), (E) and~~ (F) and (G) shall not apply to advertising done by any franchisor or franchisee ~~so long as such~~ if the advertising does not refer to ~~any~~ specific real estate.

J. Trade Names.

1. Any broker using a trade name owned by another person on signs displayed at the place of business shall include the broker's name as licensed by the Department.
2. The following legend, "Each (TRADE NAME or FRANCHISE) office is independently owned and operated," or a similar legend approved by the Commissioner, shall be used to attract the attention of the public.

K. A real estate salesperson or broker may use the terms "team" or "group" to advertise and promote real estate services if those terms do not constitute the use of a trade or d.b.a. name, and all of the following are true:

1. The team or group is comprised of real estate salespersons or brokers;
2. The team or group members are employed by the same employing broker;
3. All advertising and promotions conspicuously identify:
   a. The legal or d.b.a. name of the team's or group's employing broker as licensed by the Department.
   b. The name, as licensed, of each team or group member.
4. The team or group members' designated broker allows and has approved the advertising or promotion.

L. The use of electronic media, such as the Internet or web-site technology, which targets Arizona residents with the offering of a property interest constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

R4-28-503. ~~Licensees and developments: promotional activities~~ Promotional Activities

~~A.~~ ~~Unless an offer of a gift, product or item made in connection with a sales promotion, by a licensee or in connection with a development, is without conditions, the terms "free", "no obligation,", or terms of similar import may not be used to describe that which is offered. Any gift, product or item shall be clearly described, with the approximate retail value thereof disclosed, and any costs or conditions associated with the gift shall be disclosed before the offeree participates in the offer.~~

~~B.~~A. ~~Offers of travel, accommodations, meals or entertainment~~ A premium offered at no cost or reduced cost~~, the purpose of which is~~ to promote sales~~,~~ or leasing shall not be described as an "awards~~,~~"~~;~~ or "prizes~~,~~"~~;~~ or by a similar term. ~~words of similar import. Any costs, limitations or restrictions upon such offers shall be fully disclosed.~~

~~C.~~B. ~~An offer or inducement to purchase which purports to be limited as to quantity, or restricted as to time, shall set forth the numerical quantity and/or time applicable to the offer or inducement. Any other restrictions upon eligibility or conditions upon the acceptance of the offer shall be fully set forth in the advertisement.~~ The terms, costs, conditions, restrictions and expiration date of an offer of a premium shall be clearly disclosed in writing before the offeree participates in the offer. If the offer is without condition the term "free" or other similar term may be used.

~~D.~~C. ~~No~~ Unless provided by law, no person shall solicit, sell or offer to sell an interest in a development by conducting ~~lotteries or~~ a lottery ~~contests~~ contest, drawing, or game of chance ~~or offering prizes for the purpose of influencing~~ to influence a purchaser or prospective purchaser ~~of an interest in a development. This subsection does not apply to membership camping contracts, as provided in A.R.S. § 33-1617.~~

D. A subdivider, time-share developer, or membership camping operator may apply for approval to conduct a lottery, contest, drawing, or game of chance by submitting to the Department, the information required in A.R.S. §§ 32-2183.01(I), 32-2197.11(I) or 32-2198.10(D), the applicable fee, if any, and:

1. The name, address, telephone number, and fax number, if any of the subdivider, time-share developer or operator;
2. The legal name of the broker;
3. The public report number;
4. The time and location for collecting entries for the lottery, contest or drawing;
5. The date, time, and site for selection of a winner;
6. The conditions and restrictions to enter, if any.

R4-28-504. Developments: ~~advertising~~ Advertising

A. ~~The provisions of this rule apply to all advertising done in connection with sales or offers for sale of any interest in a development of real property, as defined in R4-28-201(A)(8) herein, except with respect to membership camping contracts, as provided in A.R.S. § 33-1617.~~ If the developer has obtained a conditional sales exemption, pursuant to R4-28-B1202, or registers a notice of intent with the Department to accept lot reservations pursuant to A.R.S. § 32-2181.03, all advertising shall disclose that only reservations or conditional sales contracts shall be taken until the public report has been issued.

~~B. Within 21 days of its use, a copy of all new advertising used in connection with the offering of an interest in a development must be submitted to the Department.~~

~~C. To the extent that it is feasible, the copy submitted to the Department shall be an accurate account, transcript or depiction of the advertisement and shall be supplemented by any information necessary to accurately explain the use of the advertisement. The Commissioner may, upon his own initiative, request further information regarding any advertisement regulated hereby.~~

~~D.~~B. ~~Advertising agencies so authorized by their clients may file advertising directly on behalf of those clients. The developer remains responsible for the content of said advertising.~~ Only a developer or the developer's authorized representative shall file advertising for a development with the Department.

~~E. Claims or representations contained in the advertising shall be accurate and provable.~~

~~F. Advertising shall fully state factual material so as to neither misrepresent the facts nor create misleading impressions.~~

~~G.~~C. Any advertisement of ~~specific properties~~ property ~~made in connection with the offering of an interest~~ in a development ~~must~~ shall include the name of the development as registered with the Department. The Commissioner may~~, by reason of the special characteristics of the development or fractional interest therein, or the limited character and duration of the offer for sale, lease or financing, or the special characteristics or limited number of fractional interests offered,~~ waive application of this ~~rule,~~ subsection if the Commissioner determines that the public interest is not affected.

~~H.~~D. The advertising of a monthly payment, total price or interest rate ~~which is~~ not available to all prospective purchasers~~, whether it is~~ or restricted~~, by qualification, condition, or otherwise,~~ is prohibited unless the lack of availability or the restriction is conspicuously disclosed within the advertisement to all prospective purchasers.

~~I.~~E. ~~There shall be no reference to proposed~~ Proposed or uncompleted ~~private facilities, whether within or without a development,~~ improvements shall not be advertised unless:

1. The estimated date of completion is ~~set forth~~ specified or, if there is no estimated date of completion, ~~that fact shall be disclosed,~~ a prominent disclosure is made in the advertisement that the improvement is proposed only and no warranty is given or implied that the improvement will be completed; and ~~unless~~
2. ~~Sufficient~~ If a completion date is specified, sufficient evidence has been presented to the ~~Commissioner~~ Department that the completion and operation of the facilities are ~~reasonably~~ assured and~~, if completion date has been set forth,~~ that completion will be within the time represented in the advertisement or promotional materials.~~;~~
3. The improvements for which construction has already commenced or for which a construction contract has been executed are not proposed improvements.

~~J.~~F. ~~Reference shall not be made in advertising~~ Reference to a proposed public facility or project ~~which~~ that purports to affect the value or utility of an interest in a development shall not be made without written disclosure of the existing status of the proposed facility. ~~Said~~ The disclosure ~~must~~ shall be based upon information supplied or verified by the authority responsible for the public facility or project and forwarded to the ~~Commissioner~~ Department.

~~K.~~G. Pictorial or illustrative depictions, other than unmodified photographs of the property being offered, shall bear a prominent disclosure identifying the nature of the depiction, such as an ~~(e.g.,~~ artist's conception,~~)~~ and ~~a legend identifying~~ shall identify those improvements ~~therein which~~ that are ~~not then~~ proposed and not in existence.

~~L.~~H. When a ~~photograph or television scene~~ pictorial representation is used as an advertisement for a specific development and is not an actual ~~photograph or scene~~ or accurate representation of ~~said~~ the property, a statement within the advertisement shall prominently disclose the distance from the advertised property.

~~M.~~I. If a map or diagram is used to show the location of the development in relation to other facilities, actual road miles from each facility to the development shall be shown on the map or diagram. ~~The map or diagram shall be prepared to approximate scale and shall include a scale of miles.~~

~~N.~~J. No advertisement shall express or imply that a facility is available for the exclusive use of purchasers of lots or interests if a public right of access or public use of the facility exists.

~~O.~~K. There shall be no reference ~~in advertising~~ to availability for use ~~by owners,~~ of private clubs or facilities in which the owner will not acquire a proprietary interest through purchase of an interest in the development unless a disclosure is made in the advertisement. The disclosure shall verify the existence of ~~said~~ the facilities, indicating that availability for use by owners of an interest in the development is at the pleasure of the owners of the facility.

~~P. Advertising which represents a development as a "retirement community", an "adult community", or any other type of community for which the name or promotional description implies that adults only will be allowed to reside therein, shall be permitted only if there exists a valid restrictive covenant which specifically prohibits the residence of minors within such development, and which specifically prohibits the sale or lease of real property within such development to any person with whom a minor will be cohabiting. A restrictive covenant must be recorded in the office of the County Recorder to be valid.~~

~~Q.~~L. When a standing body of water is described as a feature of a ~~subdivision~~ development, all advertising shall indicate the average surface area of the body of water. If a standing body of water or a flowing waterway described as a feature of a ~~subdivision~~ development is not permanent, or fluctuates substantially in size or volume, then ~~such~~ this fact shall be disclosed in all advertisements describing ~~such~~ the feature.

~~R. All advertising and promotional material disseminated prior to issuance of the Public Report shall contain the following statement: "No offer to sell or lease may be made and no offer to purchase or lease may be accepted prior to issuance of the Final Arizona Subdivision Public Report". No specific proposed selling price may be used in connection with any~~

~~advertising prior to issuance of the Final Subdivision Public Report.~~

~~S.~~M. ~~Offers, or solicitations, or trip reservations~~ When any incentive is offered to visit ~~subdivided property, or~~ any ~~other~~ place where a sales presentation for ~~subdivided property~~ a development is to be made, ~~shall set forth~~ all conditions, limitations or recipient qualifications that will be applied shall be disclosed in writing before the recipient ~~will be allowed to~~ makes the trip.

~~T.~~N. Advertising shall not include testimonials or endorsements which contain statements ~~which~~ that a ~~subdivider or~~ licensee would be precluded, by law or ~~regulation~~ rule, from making on ~~his~~ the licensee's ~~own~~ behalf.

ARTICLE 7. ~~COMMISSIONS~~ COMPENSATION

R4-28-701. ~~Commission sharing~~ Compensation Sharing; Disclosure

~~A.~~ A ~~acting in his or her capacity as~~ broker or salesperson ~~in a transaction~~ shall disclose in writing to all other parties in a transaction the identity of any other person receiving ~~any~~ a portion of the commission. ~~Nothing herein authorizes payment of commissions to unlicensed persons as prohibited by A.R.S. §§ 32-2155 and 32-2163.~~

~~B. The Commissioner shall not entertain complaints regarding purely civil disputes between licensees concerning the earning, splitting, or nonpayment of commissions.~~

ARTICLE 8. DOCUMENTS

~~**R4-28-801. Sales Listing Agreements**~~

~~A. Except as provided otherwise by these rules, all real estate listing agreements shall:~~

~~1. Be in writing;~~

~~2. Fully set forth all material terms;~~

~~3. Have a definite duration or expiration date, showing dates of inception and expiration; and~~

~~4. Be signed by the parties thereto.~~

~~B. A listing agreement shall not be assigned by a broker to another licensed entity without the express written consent of the client.~~

~~C. All real estate listing agreements shall also:~~

~~1. State the price at which the property is to be offered or, if a net listing agreement, then the minimum net amount the seller will accept;~~

~~2. Not contain any provision requiring the seller to notify the broker of his intention to cancel but shall be deemed to be cancelled as of the expiration date shown therein.~~

~~D. A licensee shall not procure, or attempt to procure, a listing agreement for property which is already subject to an existing exclusive listing agreement unless the seller is notified in writing that the execution of additional listings could expose the seller to liability for additional commissions. Nothing herein shall be construed to abrogate any civil liability of a licensee arising out of such conduct.~~

R4-28-802. Conveyance Documents; ~~Execution; Offer; Rejection; Delay; Form~~

A. Upon execution of any ~~instrument in connection with a real estate~~ transaction document prescribed pursuant to A.R.S. Title 32, Chapter 20, a ~~licensee~~ salesperson or broker shall, as soon as ~~reasonably~~ practical, deliver a legible copy of the ~~original instrument~~ signed document and final agreement to each person signing the document ~~each of the parties thereto. It shall be the responsibility of the licensee to prepare sufficient copies of such instruments to satisfy this requirement.~~

B. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a ~~licensee who has a listing agreement entitling that licensee to offer property for sale~~ salesperson or broker shall:

1. ~~Promptly~~ promptly submit all offers to purchase or lease the listed property to the client. ~~This duty to~~ The salesperson or broker shall submit offers ~~continues~~ until the sale or lease is final or close of escrow and is not ~~terminated~~ released from this duty by the client's acceptance of an offer unless the client instructs the ~~licensee~~ salesperson or broker to cease submitting offers or unless otherwise provided ~~for~~ in the listing agreement, lease or purchase contract. ~~Nothing in this subsection prohibits a broker from submitting~~ The salesperson or broker may voluntarily advise the seller or lessor of offers notwithstanding any limitations contained in the listing agreement and may submit offers after ~~his obligation to do so~~ the listing agreement has terminated.

2. ~~Submit to the client all offers received from any source whatsoever during the period of time that the licensee is obligated to submit offers. This obligation is binding upon the licensee unless otherwise provided in the listing agreement.~~

~~Nothing in this subsection shall prohibit a licensee from voluntarily advising the seller of offers notwithstanding any limitations contained in the listing agreement.~~

C. Transaction statements.

~~The broker in any real estate transaction shall deliver to the seller at the time the transaction is closed a complete detailed statement showing all of the receipts and disbursements handled by the broker and shall deliver any other documents requested by the seller pertaining directly to such transaction.~~

1. ~~The~~ In addition to the requirements of A.R.S. §§ 32-2151.01 and 32-2174, the broker shall retain true copies of ~~these statements in his or her files~~ all receipts and disbursements, including evidence of delivery to the broker's client~~;~~; or

2. ~~Retention by the broker of properly~~ the executed and delivered copies of escrow closing statements ~~which~~ that evidence all receipts and disbursements handled by the broker, ~~will be satisfactory compliance with this rule~~.

R4-28-803. Contract ~~disclosures; public report; receipt; nature of document; monies paid directly to seller~~ Disclosures

A. ~~Pursuant to A.R.S. § 32-2185.06 any~~ Any agreement or contract for the ~~purchase or lease of subdivided lands or unsubdivided lands~~ sale or lease of lots in a development that requires a public report shall contain ~~substantially~~ the following language in ~~boldfaced type~~ large or bold print above the signature portion of ~~such~~ the document:

THE PURCHASER ~~MUST~~ SHALL BE GIVEN A COPY OF THE PUBLIC REPORT ~~OF THE ARIZONA DEPARTMENT OF REAL ESTATE PRIOR TO~~ BEFORE ~~THE~~ SIGNING ~~OF~~ THIS DOCUMENT.

~~B. A record verifying the receipt of a copy of the Public Report by the prospective purchaser shall be maintained at the office of the owner, agent or subdivider for a period of not less than five (5) years. A receipt in the form attached to this rule as an exhibit is approved by the Commissioner and must be used when the prospective purchaser or lessee receives a copy of the Public Report.~~

~~C.~~B. Any agreement or contract for the sale or lease of ~~subdivided lands~~ a lot in a development shall ~~disclose~~ conspicuously disclose the nature of the document at or near the top of ~~the face of such~~ the document.

C. The contract shall indicate where the earnest money or down payment, if any, will be deposited and shall include the name of the title company, the name of the broker's trust account, or other depository.

D. Any agreement or contract for the ~~purchase or lease of subdivided lands or unsubdivided lands~~ sale or lease of a lot in a development where a down payment, ~~or~~ earnest money deposit, or other advanced money, if any, is paid directly to the seller, and not placed in a neutral escrow depository, shall conspicuously disclose this fact within the document, and the purchaser shall ~~be required to~~ sign or initial this provision indicating approval ~~thereof~~ in the space adjacent to or directly below the disclosure in the purchase contract or agreement of sale. The following disclosure shall be written in large or bold print and shall be included in the public report, purchase contract, and agreement of sale.

"Prospective purchasers are advised that earnest money deposits, down payments and other advanced money will not be placed in a neutral escrow. This money will be paid directly to the seller and may be used by the seller. This means the purchaser assumes a risk of losing the money if the seller is unable or unwilling to perform under the terms of the purchase contract."

~~EXHIBIT~~

~~REQUIRED RECEIPT FOR PUBLIC REPORT~~

~~The law and regulations of the Real Estate Commissioner require that the owner, agent or subdivider of this subdivision (or unsubdivided land) furnish you, as a prospective customer, with a copy of the public report. It is recommended that you read the report before you make any written offer to purchase or lease an interest in subdivided or unsubdivided land and before you pay any money or other consideration toward the purchase or lease of an interest in subdivided or unsubdivided land.~~

~~FOR YOUR PROTECTION, PLEASE DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT.~~

~~_____~~

~~_____~~

~~(File No.) (Tract No. or Name)~~

~~I understand the report is not a recommendation or endorsement of the subdivision but is for information only.~~

~~_____~~

~~_____~~

~~(Name) (Address)~~

~~_____~~

~~_____~~

~~_____ (Date)~~

R4-28-804. Rescission ~~of contract; disclosure~~ Of Contract

A. Any agreement or contract for the purchase or lease of

1. ~~An~~ an unimproved, subdivided lot ~~or parcel~~, or
2. ~~Any unimproved,~~ any unsubdivided land, shall contain ~~substantially~~ the following language in ~~boldfaced type~~ large or bold print above the signature portion of ~~such~~ the document:

~~THE PURCHASER OR LESSEE HEREUNDER HAS THE LEGAL RIGHT TO RESCIND (CANCEL) THIS AGREEMENT WITHOUT CAUSE OR REASON OF ANY KIND AND TO THE RETURN OF ANY MONEY OR OTHER CONSIDERATION UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY THE PURCHASER OR LESSEE EXECUTED SUCH AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF RESCISSION TO THE SELLER. FURTHER, IF THE PURCHASER OR LESSEE DOES NOT INSPECT THE LOT OR PARCEL PRIOR TO THE EXECUTION OF THE AGREEMENT, THE PURCHASER OR LESSEE SHALL HAVE A PERIOD TO INSPECT THE LOT OR PARCEL, AND AT THE TIME OF INSPECTION SHALL HAVE THE RIGHT TO UNILATERALLY RESCIND THE AGREEMENT.~~

"The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement."

~~B. At the time of inspection, the subdivider, owner or agent developer of either subdivided or unsubdivided land shall secure an affidavit from the buyer stating that the lot or parcel has been inspected by the buyer.~~

B. Any agreement or contract for the purchase or lease of a time-share interval shall contain the following language in large or bold print above the signature portion of the document:

The purchaser or lessee has the right to rescind (cancel) this agreement without cause by sending or delivering written notice of rescission to the seller or lessor by midnight of the seventh calendar day following the day on which the purchaser or prospective purchaser executed the contract or agreement.

C. An ~~adequate~~ opportunity to exercise the ~~seven (7)~~ day right of rescission shall be provided by conspicuously disclosing ~~conspicuously~~ the complete current name, ~~and~~ address, and telephone number of the seller on the face of all agreements and contracts.

R4-28-805. Public Report Receipt

When a public report is required, the developer shall complete the following public report receipt and obtain the purchaser's signature to verify that the prospective purchaser has received a copy of the public report:

PUBLIC REPORT RECEIPT

The developer shall furnish you, as a prospective customer, with a copy of the public report required by the Arizona Department of Real Estate. It is recommended that you read the report before you make any written offer to purchase or lease an interest in the development and before you pay any money or other consideration toward the purchase or lease of an interest in the development.

FOR YOUR PROTECTION, DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE HAD THE OPPORTUNITY TO READ IT. BY SIGNING THIS RECEIPT, THE BUYER HAS ACCEPTED THE PUBLIC REPORT AND ACKNOWLEDGES THE INFORMATION IT CONTAINS.

_____

_____

Public Report Registration No. Development Name and Lot No.

I understand the report is not a recommendation or endorsement of the development by the Arizona Department of Real Estate but is for information only.

_____

_____

Buyer's Name Address

_____

_____

Date

ARTICLE 10. FRANCHISES AND FICTITIOUS NAMES

R4-28-1001. Fictitious ~~names; franchises; regulations; duties~~ Name Requirements

A. No broker shall have or use a name similar to that of any broker already authorized that would cause uncertainty or confusion. In case of conflict of names between 2 brokers, the Commissioner may permit or require the newly authorized broker to supplement or modify its name.

~~A.~~B. No person shall be licensed as a ~~real estate or cemetery~~ broker ~~or salesperson~~ under more than ~~one~~ 1 fictitious name, and no person shall conduct or promote a ~~real estate or cemetery~~ brokerage business except ~~under~~ by the name under which ~~such~~ the person or brokerage is licensed, except that a broker authorized to conduct business as a franchisee may use both the approved franchise name and the broker's fictitious name as licensed.

C. No professional corporation or professional limited liability company licensed pursuant to A.R.S. § 32-2125(B) shall adopt a fictitious name.

~~B. Any real estate broker who enters into an agreement which authorizes such broker to utilize the name or trade name of any other entity in the conduct of real estate business shall file written proof of such agreement on forms provided by the Department. Such a trade name may only be used concurrently with the licensed name of the broker.~~

~~C. Any broker using a trade name, the use of which required obtaining permission from another who has an existing and continuing right in that trade name by virtue of any state or federal law, in advertising, other than of specific properties for sale, jointly with other brokers under a trade name, shall cause the following legend to appear in a conspicuous and reasonable manner calculated to attract the attention of the public:~~

~~Each (TRADE NAME) office (or franchise) is independently owned and operated.~~

~~This legend may be rephrased if the consent of the Commissioner is secured.~~

~~D. Any licensee using a trade name owned by another on business cards, letterheads, contracts, or other documents relating to real estate transactions, shall clearly and unmistakably include the employing broker's name, as registered with the Department, in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend:~~

~~Each (TRADE NAME) office (or franchise) is independently owned and operated.~~

~~This legend may be rephrased if the consent of the Commissioner is secured.~~

~~E. Any broker using a trade name owned by another on signs displayed at his place of business shall clearly and unmistakably include such broker's name, as registered with the Department, on such signs in a conspicuous and reasonable manner calculated to attract the attention of the public and shall also include the following legend either on such signs or on an additional sign prominently displayed on the premises:~~

~~Each (TRADE NAME) office (or franchise) is independently owned and operated.~~

~~This legend may be rephrased if the consent of the Commissioner is secured.~~

R4-28-1002. Franchises

Before establishing, acquiring, relinquishing or transferring a franchise in Arizona the franchisee shall submit to the Department the following, as applicable:

1. A letter authorizing the assignment and use of the trade name, and signed by the person who is authorized to assign franchise rights and use of the trade name;
2. A copy of the franchise logotype or trademark and the trade name;
3. The name of the franchise;
4. The name of the employing broker acquiring or relinquishing the franchise and if it is an acquisition or relinquishment;
5. The new name under which the franchisee will be operating;
6. The signature of the designated broker for the employing broker who is acquiring or relinquishing the franchise;
7. The previous name under which the employing broker was operating.

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1101. Duties ~~to client~~ To Client

A. A licensee owes a fiduciary duty to ~~his~~ the client and shall protect and promote the client's interests ~~of the client~~. The licensee shall also deal fairly with all other parties to a transaction.

B. ~~Each~~ A licensee participating in a real estate transaction shall disclose in writing to all other parties ~~to the transaction~~ any information which the licensee possesses ~~which~~ that materially and adversely affects the consideration to be paid by any party to the transaction, including~~, but not limited to, the following matters~~:

1. Any information that the seller or lessor is or may be unable to perform~~ due to defects in title.~~;
2. Any information that the buyer or lessee is, or may be, unable to perform~~ due to insolvency or otherwise.~~;
3. Any material defects existing in ~~any~~ the property being transferred~~.~~;
4. The possible existence of ~~any~~ a lien or encumbrance on ~~any~~ the property being transferred~~ in connection with the real estate transaction~~.

C. A licensee shall expeditiously perform ~~as expeditiously as possible~~ all acts ~~required of him or her which result~~ resulting from ~~entry into~~ an agreement authorized by the holding of a ~~real estate~~ license. ~~Delays~~ Any delay in ~~such~~ the performance, either intentional or through neglect, ~~are~~ is prohibited.

D. A licensee shall not allow a controversy with another licensee to jeopardize, delay, or ~~in any way~~ interfere with the initiation, processing or finalizing of a ~~real estate~~ transaction on behalf of a client.

E. A ~~licensee~~ salesperson or broker shall not act as a principal, directly or indirectly, in a ~~real estate~~ transaction without informing the other parties to the transaction, in writing and ~~prior to~~ before or concurrent with any binding agreement, that ~~he or she~~ the salesperson or broker has a ~~real estate~~ license and is acting as a principal.

F. A licensee shall not accept compensation from or represent both parties to a transaction without the prior written consent of both parties.

G. A licensee shall not accept any ~~profit from, or~~ compensation ~~for~~, rebates, or profit for transactions made on behalf of a client without the written consent of the client.

R4-28-1102. Property Negotiations ~~concerning property~~

~~Negotiations~~ Except for owner listed properties, negotiations shall be conducted exclusively through the ~~listing~~ principal's broker or ~~his~~ the broker's representative unless:

1. The ~~seller or lessor~~ principal waives this requirement in writing, and
2. No licensed representative of the ~~listing~~ broker is available for ~~a period of twenty-four (24)~~ hours.

ARTICLE 12. ~~SUBDIVISIONS~~ DEVELOPMENTS

PART A. APPLICATION

R4-28-A1201. Development Name; Lot Sales; Applicant

A. Any person may submit a development application for a public report, a certificate of authority, or a special order of exemption, provided the applicant has a recorded ownership interest in the land, such as a deed, option, beneficial interest in a trust, or other recorded interest approved by the Commissioner. The application for a public report or certificate of authority shall contain the following information, as applicable:
   1. The name of the development or cemetery, as shown on the recorded map, and the marketing name if one will be used;
   2. The list of the lots to be offered, including the description of the sales offering;
   3. The name, address, telephone number, and fax number, if any, of the applicant
   4. The applicable information in Parts A and B.

B. If the applicant is an individual, the applicant shall list the Social Security number.

C. If the applicant is a corporation, the application shall contain the following information:
   1. A copy of the Articles of Incorporation stamped "Received and Filed" by the Corporation Commission. If more than 1 year has elapsed between the date the Articles were stamped "filed" by the Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Corporation Commission may be required;
   2. A corporate resolution authorizing the person signing the application on behalf of the corporation;
   3. The name, address and social security number of each officer, director, and of each shareholder controlling or holding more than 10% of the issued and outstanding common shares, or 10% of any other proprietary, beneficial or membership interest in the entity.

D. If the applicant is a partnership, the application shall contain the following information:
   1. A copy of all partnership agreements;
   2. Proof of registration with the Secretary of State if any partnership is a limited partnership, foreign or domestic;
   3. If the general partner is a corporation, the information requested in subsection (C);
   4. If the general partner is a limited liability company, the information requested in subsection (E);
   5. The name and address of each partner in the partnership;

E. If the applicant is a limited liability company, the application shall contain the following information:
   1. A copy of the Articles of Organization stamped "Received and Filed" by the Corporation Commission. If more than 1 year has elapsed between the original filing with the Corporation Commission and the filing date of the development application, a Certificate of Good Standing from the Corporation Commission may be required.
   2. A copy of the operating agreement and any amendments;
   3. If not included in the operating agreement or Articles of Organization, a copy of the company resolution signed by all members stating if management of the limited liability company is established as manager-controlled or member-controlled, and the name of the member or manager appointed to act on behalf of the company and sign the application;
   4. The name and address of each member, manager and managerial employee and the name and address of any person controlling or holding more than 10% of the membership interest in the limited liability company.
   5. If a member is a corporation, the information requested in subsection (C);
   6. If a member is a partnership, the information requested in subsection (D);

F. If the applicant is a trust, the application shall contain the name and address of each trustee, beneficiary, and anyone in control of the trust.

G. If the applicant is a subsidiary corporation, the application shall contain the name and address of the parent corporation.

R4-28-A1202. Development Map; Location; Land Characteristics

A. The applicant shall submit a legible copy, no larger than 11" X 17", of the recorded development map showing, as applicable:
   1. The county recorder's recording information, including the book and page of maps and recording date;
   2. County or city approval;
   3. Applicable dedications;
   4. Monuments, distances and bearings;
   5. Registered land surveyor certification.

B. The applicant shall identify the location of the development, including the street, city, county and state, and:
   1. The miles and direction from the nearest city or town, if applicable;
   2. The most direct route for getting to the development from a federal, state, county, or city road.

C. The application shall include a description of the physical characteristics of the land and any unusual factors that may affect it, such as if it has level or hilly terrain, rocky, loose or alkaline soil, and
   1. The gross acreage in the development;
   2. The total number of lots within the development including a description of phasing, if applicable,
   3. If and how lots are permanently or temporarily staked or marked for easy location.

R4-28-A1203. Flood and Drainage; Land Uses; Adverse Conditions

The applicant shall state and include as applicable:

1. If the development is subject to any known flooding or drainage problems and a letter bearing the signature and seal of a professional civil, city or county engineer, or county flood district detailing the drainage conditions and flood hazards. The letter shall include the effect of

any flood plain and its location, the effect of a 100 year frequency storm, and if flood insurance is required.

2. If the development lots are subject to subsidence or expansive soils. If subsidence or expansive soils exist, a professional engineer's letter addressing the affects of the condition, remedies, and buyer's on-going responsibilities in plain language;
3. A description of the existing and proposed land uses in the vicinity of the development that may cause a nuisance or adversely affect lot owners, such as freeways, airports, sewer plants, railroads or canals, including:
   a. Any unusual safety factors within or near the development;
   b. A description of all current and proposed adjacent land uses.
4. If the development is affected by any unusual or unpleasant odors, noises, pollutants, or other nuisances;
5. A description of any agricultural activity or condition in the area that may adversely affect a lot owner, including any odors, cultivation and related dust, agricultural burning, application of pesticides, or irrigation and drainage.
6. If the development lots are subject to any known geological or environmental condition that would or may be detrimental to a purchaser's health, safety or welfare;
7. If the development lots are located within the boundary of a federal designated Superfund site or a state designated Water Quality Assurance Revolving Fund site.

R4-28-A1204. Utilities

The applicant shall include information about electrical, telephone, and natural gas utilities available to the development, including:

1. The names, addresses and telephone numbers of the electrical, telephone and natural gas company that will provide service;
2. The location of existing electrical, telephone and natural gas utilities in relation to the development;
3. The name of the person responsible for completion of each utility to the lot lines;
4. The estimated completion date of each utility to the lot lines;
5. If the developer will only install conduit, a description of the arrangement made to complete operational utilities to lot lines;
6. The estimated cost a lot purchaser will be required to pay for completion of each utility to the purchaser's lot line, and if the offer is for unimproved lots, the estimated costs from the lot line to the dwelling;
7. Upon completion of the utilities, what other costs or requirements exist before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and fees for pulling wire through the conduit;
8. If propane gas will be used, a letter from the supplier stating responsibility for providing service to the development including a description of the requirements to be met and costs to be paid by the lot purchaser for receiving the service;
9. If street lights will be available, who is responsible for completion, the estimated completion date and who will pay for the electricity.

R4-28-A1205. Water Supply

The applicant shall include information about any water supply to the development, including:

1. If the water supply will be provided by a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler or other source;
2. The name, address and telephone number of the water provider;
3. The compliance status of the water provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the present water utility or water utility closest to the development;
5. The name of the person responsible for completion of the utility to the lot lines;
6. The estimated completion date of the utility to the lot lines and how and when the utility will be completed;
7. The estimated cost a lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
8. If an unimproved lot offering, the estimated cost a lot purchaser will be required to pay for completion of the utility from the lot line to the dwelling;
9. Upon completion of the utility, what other cost or requirement exists before the lot purchaser receives service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from the private well, will the purchaser be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the supplier if water for domestic use will be transported or hauled to individual lots by the lot purchaser. A cost estimate computed on a monthly basis for a 4-member family, including the cost of water, cistern and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. If the development is a subdivision or part of a subdivision, a water adequacy report from the ADWR;
16. If the development is unsubdivided lands, a water availability report from the ADWR. The report or a brief summary of the report approved by the Department shall be displayed in all promotional material and contracts for sale;
17. If a water provider is a public service corporation, a copy of the Certificate of Convenience and Necessity from the Corporation Commission, or explanation why there is no Certificate of Convenience and Necessity may be required.

R4-28-A1206. Sewage Disposal

The applicant shall include information about sewage disposal for the development, including:

1. If the sewage disposal will be provided by a municipality, improvement district, public utility, private company, or individual sewage disposal system;
2. The name, address and telephone number of the sewage disposal company;

3. The compliance status of the sewage disposal provider with the ADEQ as of the date of the application. If in noncompliance, provide an explanation;
4. The name of the person responsible for completing the sewage disposal utility to the lot lines;
5. The estimated completion date of the utility to the lot lines;
6. The estimated cost the lot purchaser will be required to pay for completion of the utility to the purchaser's lot line;
7. If offering an unimproved lot, the estimated cost the lot purchaser will pay for completion of the utility from the lot line to the dwelling;
8. Upon completion of the utility, what other cost or requirement exists before the lot purchaser receives service, including the service charge, hookup fees, tap-in fees and development fees;
9. The name of the person responsible for maintenance of the sewage disposal utility within the development other than from lot line to dwelling;
10. The name of the person who is or will be responsible for maintenance of the sewage disposal utility outside the development;
11. What cost if any will the lot purchaser be responsible for paying toward maintenance of the sewage disposal utility;
12. If a sewage disposal provider is a for-profit public service corporation, a copy of the Certificate of Convenience and Necessity from the Corporation Commission, or an explanation why there is no Certificate of Convenience and Necessity may be required;
13. A description of the type of individual sewage disposal system the lot purchaser will be required to install in accordance with the standards and requirements of ADEQ or its designee;
14. A description of all requirements and costs involved to install an operational individual sewage disposal system, including any cost for governmental licensing and permitting, equipment and other necessary costs;
15. If an operational individual sewage disposal system cannot be installed, will the lot purchaser be offered a refund of the purchase price, and if so, an explanation of any condition or restriction involving the refund;
16. If a dry sewer system will be installed for future connection to a future provider, the name of the future provider, all requirements and costs to lot purchasers, and the estimated connection date.

R4-28-A1207. Streets and Access

A. The applicant shall include a statement attesting that:
   1. Exterior streets providing access are private or federal, state or county highways or municipal streets;
   2. The interior streets are public or private; and
      a. If any streets are private, a description of what provisions have been made to assure purchasers of a legal right to use the private streets;
      b. If the streets are completed;
      c. The standards to which the streets will be or are constructed;
      d. If the streets are not completed, the person responsible for completion and the estimated completion date;
      e. The type of existing and proposed surfacing;
      f. The cost, if any, the lot purchaser will be required to pay toward street completion;
      g. The name of the party responsible for exterior and interior street maintenance;
      h. If a city or county is responsible for maintaining the streets and the approximate date when streets will be accepted for maintenance;
      i. The cost, if any, the lot purchaser will be required to pay toward street maintenance.

B. The applicant shall provide documentation that demonstrates that there is permanent access to the land over terrain which may be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The documentation may include:
   1. A statement from a title insurance company, signed by an authorized title officer, affirming that legal access exists to the development and lots within the development. The statement shall:
      a. Describe the legal access by listing all recorded instruments which establish the legal access.
      b. Be accompanied by a map on which the access is shown with accurate references to the recorded instruments.
      c Be accompanied by a legible copy of each recorded instrument listed in the statement.
   2. A statement bearing the seal and signature of a registered land surveyor or professional engineer affirming that the legal access to and within the development as described in the title insurance company legal access statement is over terrain that can be traversed by conventional 2-wheel drive automobiles and emergency vehicles. The statement shall affirm that:
      a. The legal access corresponds with the actual physical access to the development and to the lots.
      b. The legal access is permanent and describe how that permanence is assured.
   3. The recorded subdivision map which shows approval by the applicable city or county officials.

C. Criteria demonstrating permanent access includes:
   1. Recorded easements or road dedications whether public or private. If private, the development lot owners, emergency vehicles and utility service providers shall have access rights;
   2. Lands on which easements and roads are provided shall be traversable by conventional 2-wheel drive automobiles and emergency vehicles;
   3. Road maintenance programs that assure permanency of the access. Road maintenance programs include those administered by city or county governments, city or country improvement districts or private property owner associations;
   4. Recorded documentation that establishes legal and permanent access for development lot owners through federal or state lands.

R4-28-A1208. Flood Protection and Drainage Improvements

The applicant shall include with the application the following information about flood protection and drainage improvement:
   1. A description of any current or proposed improvement;
   2. The name of the person responsible for completion of the improvement;
   3. The estimated completion date of the improvement;
   4. The cost, if any, the lot purchaser will be required to pay for completion of the improvement;
   5. The name of the person responsible for the continuing maintenance and expense of the improvement;
   6. If a city or county is responsible for maintenance, the approximate date when the improvement will be accepted for maintenance;

7. The cost, if any, the lot purchaser will be responsible for paying toward maintenance of the improvement.

R4-28-A1209. Common, Community, or Recreational Improvements

The applicant shall provide with the application a list of all common, community or recreational improvements located within the development and include the following information:

1. The name of the person responsible for completion of each improvement;
2. The estimated completion date of each improvement;
3. The estimated cost a lot purchaser will be required to pay for the completion of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement;
5. The cost, if any, the lot purchaser will be responsible for paying toward the maintenance of each improvement.

R4-28-A1210. Master Planned Community

The applicant shall include the following information about a master planned community:

1. A list of all improvements located outside the development, but included in the development offering, including all common, community and recreational improvements;
2. The name of the person responsible for completing each improvement;
3. The estimated completion date of each improvement;
4. The name of the person responsible for the continuing maintenance and expense of each improvement;
5. The cost, if any, the lot purchaser will be responsible for paying toward the completion and maintenance of each improvement.

R4-28-A1211. Assurances For Completion and Maintenance of Improvements

A. The applicant shall identify:

1. What arrangements have been made to assure the completion, delivery and continued maintenance of the improvements listed in subsections R4-28-A1204 through R4-28-A1210;
2. If the assurances to complete and deliver the improvements have been approved by the county or city, where applicable, and if so, submit a copy of the county or city approval;

B. Assurances for completion shall include any of the following:

1. A surety or completion bond from an insurance company licensed to do business in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:
   a. Be stipulated by and payable to a third party who is not the developer. If the third party is the Homeowners Association and the developer is the Declarant in the recorded Development restrictions, and the Declarant is still in majority control of the Homeowners Association, the decisions and direction of the Homeowners Association relating to the bond shall be from a majority of the owners not including the Declarant;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date and clearly state when and how the third party may draw on the funds;
   d. Be in an amount 10% greater than the estimated amount to complete all improvements;
   e. Include a registered engineer's cost estimate to complete the improvements.
2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona and acceptable to the Commissioner. The irrevocable letter of credit shall specify which improvements are included and shall;
   a. Be stipulated by and payable to a third party who is not the developer. If the third party is the Homeowners Association and the developer is the Declarant in the recorded Development restrictions, and the Declarant is still in majority control of the Homeowners Association, the decisions and direction of the Homeowners Association relating to the letter of credit shall be from a majority of the owners, not including the Declarant;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date and clearly state when and how the third party may draw on the funds;
   d. Be in an amount 10% greater than the estimated amount to complete all improvements;
   e. Include a registered engineer's cost estimate to complete the improvements;
   f. State that repayment is the responsibility of the developer and not of the third party;
   g. State that the irrevocable letter of credit is non-cancelable.
3. A loan commitment and agreement from a lender licensed to do business in Arizona and acceptable to the Commissioner. The loan commitment and agreement shall specify which improvements are included and shall;
   a. Be stipulated by and payable to a third party who is not the developer. If the third party is the Homeowners Association and the developer is the Declarant in the recorded Development restrictions, and the Declarant is still in majority control of the Homeowners Association, the decisions and direction of the Homeowners Association relating to the loan commitment and agreement shall be from a majority of the owners not including the Declarant;
   b. Be accepted and signed by all parties;
   c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date and clearly state when and how the third party may draw on the funds.
   d. Be in an amount 10% greater than the estimated amount to complete all improvements;
   e. Include a registered engineer's cost estimate to complete the improvements;
   f. State that repayment is the responsibility of the developer and not that of the third party even if the third party draws on the funds.
4. A trust or escrow account with a financial institution or escrow company licensed to do business in Arizona and acceptable to the Commissioner. The trust or escrow account shall specify which improvements are included and shall;
   a. Be stipulated by and payable to a third party who is not the developer. If the third party is the Homeowners Association and the developer is the Declarant in the recorded Development restrictions, and the Declarant is still in majority control

of the Homeowners Association, the decisions and direction of the Homeowners Association relating to the trust or escrow account shall be from a majority of the owners not including the Declarant;

b. Be accepted and signed by all parties;

c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date and shall clearly state when and how the third party may draw on the funds;

d. Be in an amount 10% greater than the estimated amount to complete all improvements;

e. Include a registered engineer's cost estimate to complete the improvements;

f. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.

5. Subdivisions. The municipal or county government shall prohibit occupancy and the subdivider shall not close escrow for lots in the subdivision until all proposed or promised subdivision improvements are complete.

a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.

b. The subdivider shall submit a written agreement between the subdivider and an escrow or title insurance company, licensed to do business in Arizona, stating that the company will process all sales transactions and that no escrow will close on any lot until all subdivision improvements are complete. The agreement shall state that the escrow or title insurance company will monitor sales and notify the Department immediately of any sale not being processed by the escrow or title company.

c. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow shall not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.

d. Escrow may close on a lot before completion of all improvements if the lot is within a phase of the subdivision where all improvements are complete and may be used and maintained separately from the improvements required for the entire subdivision.

e. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases.

f. Any improvement offered or promised to purchasers that is scheduled for completion in a later phase shall have its completion assured by an alternative method of assurance listed in this Section.

g. If the subdivider's sales include unimproved (vacant) lots or if the scheduled completion date for an improvement is more than 1 year into the future, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.

6. City and county trust agreement. Any municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed, provided:

a. The trustee is an escrow company licensed to do business in Arizona, and

b. The agreement is recorded.

7. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and not close any escrow until all improvements are complete. The agreement shall contain the following stipulations:

a. The funds shall not be released nor the purchaser's deed or other relevant documents recorded until certification is given to the Department and the escrow agent by the developer's architect or engineer that the project is complete, ready for occupancy and in compliance with all city and county requirements.

b. If the completion date is not met:

i. The developer shall give purchasers notice that completion dates were not met and an updated completion schedule, and

ii. A purchaser may cancel and receive a full refund by sending written notice to the escrow agent, and

iii. The public report is invalid and all sales are suspended.

iv. The public report shall be deemed valid if improvements are completed at a later date and the public report is complete and accurate.

C. If the construction of any improvement is completed in phases, a description of the phased schedule of completion, including the lots in each phase and estimated completion dates.

R4-28-A1212. Schools and Services

A. The applicant shall include the following information about schools:

1. The location of and distance to the nearest public elementary, junior and high schools and if school bus or other transportation is available;

2. The type and location of any other school located within a ½ mile radius of the exterior boundaries of the development.

B. The applicant shall include the following information about any of the following services:

1. Community shopping. The location and distance from the development of the nearest community shopping area where food, drink and medical supplies may be purchased;

2. Public transportation. The type, provider, location and distance of the nearest access point of public transportation for the development;

3. Medical facility. The type, provider, location and distance of the nearest medical facility;

4. Fire protection. If fire protection is available to the development, the name of the provider and the cost to the lot purchaser;

5. Ambulance service. If ambulance service is available to the development and if the development is in a 911 service area. If not, the name, address and telephone number of the ambulance service available.

6. Police service. If police service is available to the development, and the name of the provider;

7. Refuse collection. If provisions have been made for refuse collection, the name of the service provider and

the cost to the lot purchaser. If no provisions have been made, what a buyer will do to dispose of refuse.

R4-28-A1213. Property Owners' Association

The applicant shall provide the following information about a property owner's association:

1. The name of the association, if any;
2. The name of the master property owners' association, if any;
3. The amount of the association assessment that property owners will be required to pay, and how it will be paid;
4. If the association is legally formed and operational;
5. When and under what conditions control of the association will be released to lot purchasers;
6. When and under what conditions title to the common areas will be transferred to the association;
7. If the common areas are subject to any lien or encumbrance. If yes, explain how purchasers' use and enjoyment of common areas will be protected in the event of default.
8. If all lot owners will be required to be members of the association. If not, explain;
9. If non-members will be liable for payments to the association;
10. A copy of the Articles of Incorporation and Bylaws in effect;
11. A statement from an attorney, licensed in the state where the property is located, that the Articles of Incorporation and Bylaws are final and in effect.

R4-28-A1214. Development Use

The applicant shall provide the following information about development use:

1. If unimproved (vacant) lots or improved (with building) lots will be sold or leased;
2. The use for which development lots will be offered and an identification of the lots and their proposed use if more than 1 use is contemplated;
3. If the development or any lot is subject to adult occupancy or age restrictions;
   a. If yes, explain the restriction;
   b. If yes, explain if this restriction is in compliance with the Federal Fair Housing Act.
4. If all or any portion of the development is located in an open range or area in which livestock may roam at large under the laws of this State and what provisions, if any, have been made for the fencing of the development to preclude livestock from roaming within the development and on a purchaser's lot. If land is located in an open range or area in which livestock may roam at large, the purchase contract shall contain:
   a. What provisions, if any, have been made for the fencing of the development to preclude livestock from roaming within the development; and
   b. What fencing requirements exist for the buyers to preclude livestock from roaming on their property.
5. If mineral rights are, or will be, reserved from the development lots and what the effect will be on lot owners if the minerals are extracted from the development;
6. A full written disclosure of any condition or provision not specified in subsections (1) through (5) that may limit the use or occupancy of the property.

R4-28-A1215. Development Sales

The applicant shall provide a description of the sales offering and:

1. A description of how sales or leases will be made and the manner by which title, right or other interest contracted for is to be conveyed to the purchaser, including copies of sales and lease transaction documents;
2. If cash sales are allowed and when the purchaser takes title;
3. Where the purchaser's deposit and earnest monies will be deposited and held;
4. If the deposit monies are available for use by the seller, when and under what conditions the monies will be released;
5. When the lot purchaser will be permitted to use and occupy the lot;
6. An explanation if the purchaser will not receive title free and clear of all liens;
7. The estimated average sales price for the lots;
8. If any of the property will be leased, and if so;
   a. A description of any provision for increase of rental payments during the term of the lease and any provisions in the lease prohibiting assignment or subletting, or both;
   b. If the lease prohibits the lessee from mortgaging or otherwise encumbering the leasehold;
   c. If the lessee is permitted to remove an improvement when the lease expires.
9. The name, address and telephone number of the Arizona broker who will be responsible for sales. If none, explain why;
10. The name and telephone number of the custodian of the development records and the physical location where the records will be kept;
11. If the property has been or will be offered for sale before the date of the development application. If yes, explain.
12. If the sales documents contain all contract disclosures required by rule and statute.

R4-28-A1216. Title Reports and Encumbrances

The applicant shall provide the following information concerning title reports and encumbrances:

1. Copies of any unrecorded liens or encumbrances against the property;
2. A title report showing:
   a. An effective date not more than 30 days from Department receipt. The Department may request the applicant to update the title report so that it is not more than 30 days old when the public report is issued;
   b. A legal description based upon a recorded map, condominium or timeshare declaration. Metes and bounds legal descriptions shall be used only for membership camping application title reports;
   c. The applicant's interest in the property;
   d. The name and telephone number of the person who prepared the title report;
   e. A requirement page, if applicable;
   f. The following statement after the title exceptions: "There are no further matters of record affecting the land."
3. Legible copies of all recorded and unrecorded documents reflected by the title report, or known to applicant, such as restrictions, easements, liens and encumbrances, trust agreements, options and maps.

R4-28-A1217. ADEQ Approval

The applicant shall obtain subdivision approval from ADEQ or its designee.

R4-28-A1218. Property Registrations in Other Jurisdictions
The applicant shall provide a list of the jurisdictions where a property registration was filed with or accepted by another department of real estate or similar regulatory agency.

R4-28-A1219. Condominium Developments
The applicant shall provide the following information about condominium development:

1. A copy of the recorded condominium declaration in effect, map and amendments, and
2. An opinion letter from an attorney licensed to practice in Arizona stating that the condominium plat and declaration of condominium are in compliance with the requirements of A.R.S. §§ 33-1215 and 33-1219.

R4-28-A1220. Foreign Developments

A. Unless exempt pursuant to A.R.S. § 32-2181.02, any development located outside the state that is advertised, promoted or sold within the state shall comply with all Arizona laws and rules as if the land was located in the state.

B. Any law or rule that is specific to Arizona may be waived by the Department, or the Department may request and accept the domicile state or country's equivalent form of documentation.

C. The application shall include evidence that the domicile state or country has authorized the sale of lots and that the development is in compliance and good standing. If the domicile state or country issues a public report or equivalent, the application shall include the report.

R4-28-A1221. Cemetery Developments
The applicant shall provide the following information about cemetery developments:

1. A statement that there are no liens on the cemetery property
2. An accounting of the endowment care fund for an existing perpetual care cemetery;
3. A financial statement of the applicant.

R4-28-A1222. Membership Camping Developments
The applicant shall provide the following information about a membership camping development:

1. If the interest of the operator is evidenced by a lease, license, franchise or reciprocal agreement, a copy of the document and any amendments;
2. A description of any lakes or streams available for recreational use;
3. A description of any exchange network and the responsibilities, obligations and rights of the operator and purchaser, and copies of all exchange network documents.

R4-28-A1223. Affidavit
The applicant shall sign an affidavit attesting that the information found in the application is true and correct.

PART B. GENERAL INFORMATION

R4-28-B1201. Expedited Registration For Improved Subdivision Lots and Unsubdivided Lands

A. A developer may use the expedited public report registration by preparing the public report and submitting the appropriate application documents and fees established in A.R.S. § 32-2183(B) or 32-2195.03(B) to the Department. The Department shall assign a registration number to each application and verify the following:

1. The correct application form has been used and is 2-hole punched at the top in standard placement. The application is placed on a 2-prong AACO-type fastener in a file folder and delivered to the Department in an expanding file folder. Maps may be left off the fastener, folded and placed in the expanding file. The application shall include:
   a. The Expedited Registration Request letter signed by the applicant; and
   b. The completed Department checklist for administrative completeness that includes the documents required in Article 12, Part A and A.R.S. § 32-2183.
2. The filing fees have been included with the application;
3. All application questions have been answered;
4. The application signature page has been properly executed;
5. All required documents have been submitted; and
6. A complete and accurate public report in the Department's published format on a computer diskette formatted in a word processing program compatible with the Department's current computer operating system and word processing software has been submitted and all exhibits used for disclosure have been included on the diskette. (The developer may obtain a diskette containing the public report template from the Department upon request.)

B. Within the administrative review time-frame, the Department may provide the applicant with an opportunity to satisfy a deficiency. The overall 15 business day limitation provided by A.R.S. §§ 32-2183(B) and 32-2195.03(B) shall be suspended until the applicant satisfies the deficiency.

R4-28-B1202. Conditional Sales Exemption

A. Any developer applying for a special order of exemption authorizing the offer for sale of a subdivision lot or unsubdivided land before issuance of a public report shall provide the following information to the Department:

1. The completed and executed Petition for Conditional Sales Exemption;
2. The completed and executed subdivision or unsubdivided land application for public report;
3. The purchase contract containing all required contract disclosures and the Conditional Sales Addendum;
4. A current title report showing ownership interest of the developer and acceptable condition of title;
5. A copy of the recorded development map, or if not recorded, a copy of the unrecorded map;
6. A copy of the Condominium Declaration, if applicable;
7. A Certificate of Assured Water Supply, or a letter from the ADWR or other evidence that the property is located in an area designated as having an assured water supply, if the property is located in a groundwater active management area;
8. A water adequacy report from the ADWR or evidence that the property is located in an area designated as having an adequate water supply, if the property is located outside of a groundwater active management area;
9. Any other information revealed necessary after preliminary review.

B. The conditional sales exemption shall expire upon issuance or denial of the public report, or upon issuance of an order to summarily suspend sales, to cease and desist, or a voluntary suspension of sales by the developer or owner.

~~**R4-28-1204. Public reports**~~

~~**A.** The owner, agent or subdivider who is a successor in interest to 4 to 10 lots, inclusive, within a subdivision previously approved by the Commissioner shall be required to file with~~

~~the Commissioner a short form subdivision questionnaire furnished by the Department. The successor in interest shall be required to receive approval by the Commissioner prior to offering any of the lots for sale or lease.~~

~~B. In a subdivision where the previous subdivider has completed all amenities in accordance with the Public Report:~~

~~1. The information required shall include only the changes in ownership in such lots, together with any material changes, as defined in R4-28-1203, occurring subsequent to the Commissioner's original approval of the subdivision within which such lots are located. The answers shall also refer to the previous approval of the subdivision by the Commissioner. Answers to the questionnaire shall be deemed to incorporate all notices and accompanying documents previously filed with the Commissioner relative to the same subdivision and shall constitute one consolidated filing.~~

~~2. No payment to the subdivision recovery fund shall be required.~~

~~3. The Commissioner may grant an exemption from this requirement to the successor in interest if he determines that full compliance with this Regulation is not necessary for the protection of purchasers or lessees.~~

~~C. The subsequent owner of four or more parcels in a subdivision where the previous subdivider has failed to complete proposed amenities in accordance with the estimated completion date specified in the Public Report shall not be issued an amended Public Report until the requirements of subsection (B) of this Section are met and any one of the following occurs:~~

~~1. The subsequent owner obtains a performance bond in favor of the state or local authority and for the benefit of lot purchasers, securing his promise to complete the previously proposed amenities by a designated date; or~~

~~2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Commissioner is furnished satisfactory evidence that all proposed amenities have been completed and/or accepted by the county; or~~

~~3. Permission is obtained from all previous purchasers in the subdivision for completion of the proposed amenities by the new designated date for completion; or~~

~~4. The subsequent owner establishes to the satisfaction of the Commissioner that adequate financial arrangements have been made to assure completion of the proposed amenities; or~~

~~5. The Commissioner concludes that the subsequent owner has not become obligated to complete amenities.~~

~~D. Upon request of the Commissioner the owner, subdivider or agent shall accompany the subdivision filing with reports prepared by competent authorities substantiating the assurances made for the proposed subdivision. The Commissioner will determine the sufficiency of the data so submitted and the qualifications of the parties preparing such data.~~

~~E. The requirements of subsections (A) through (D) of this Section apply to both subdivided and unsubdivided lands.~~

~~R4-28-1203.~~ R4-28-B1203.~~Material change: definition; requirements~~ Public Report and Certificate of Authority, Amendments

A. ~~Pursuant to A.R.S. § 32-2184, material change in the plan under which a subdivision is offered for sale or lease include but are not limited to:~~ The developer shall apply for an amendment to the public report or the application for Certificate of Authority for any of the following material changes:

~~1. Items listed in subsection (A) of A.R.S. § 32-2181;~~

~~2. Addition, alteration, termination or extension of completion date of any public utility services to a subdivision;~~

~~3. Change in business or corporate name of the subdivider;~~

~~4. Any change in the use or uses for which a subdivision will be offered, including any amendments or changes in recorded restrictions;~~

~~5. Any change in lot or street lines or relocation of easements to a subdivision plat, previously approved by the Commissioner. This shall include any sale of a lot whose boundaries differ from the lot lines set forth in the recorded plat.~~

~~6. When, for any reason, the subdivider is unable to fulfill agreements, assurances and representations given by the subdivider to the Commissioner in the application for a Public Report or to a political subdivision authorized to regulate subdivisions.~~

~~7. Creation or discovery of latent hazards affecting the subdivision such as adverse geologic conditions not apparent at the time of issuance of the Public Report for the subdivision.~~

1. The name of the developer;
2. The address of the developer, if different than the address in the real estate sales contract and advertising materials of the developer;
3. Changes affecting access;
4. Changes in the identities of utility providers to the development, unless the change is the result of a municipality or county acquiring a private utility provider;
5. Closure of a school specified in the public report or the public announcement that a new school will be located within a ¼ mile of the development;
6. The elimination of, or a material reduction in any improvement installed by the developer;
7. An extension of the estimated schedule for completion of any improvement by more than 30 days;
8. When the developer is unable to fulfill any agreement, assurance, or representation given by the developer to the Department in the application for a public report or certificate of authority, or to a political subdivision authorized to regulate developments;
9. Discovery of latent hazards affecting the development, such as adverse geologic or environmentally hazardous conditions not apparent at the time of issuance of the public report or certificate of authority for the development;
10. The filing of a bankruptcy petition by the developer or affiliate of the developer;
11. The existence of any litigation affecting title to, or purporting to limit, the use of all or any portion of the development;
12. Revision to the map of the development. If minor corrections are made by the engineer on an Affidavit of Correction, the applicant shall notify the Department of the nature of the correction;
13. The expiration of any financial assurance for completion of development improvements before the completion of the improvements unless the financial assurance is renewed or replaced with another assurance satisfactory to the Department.

B. The Department may require the developer to apply for an amendment to the public report or the application for Certificate of Authority for any of the following material changes:

1. Changes to any information not included in subsection (A) that the developer submitted or was required to sub-

mit pursuant to the provisions of A.R.S. §§ 32-2181, 32-2194, 32-2195, 32-2197, 32-2198, R4-28-301(A), and any other rule;

2. Substitution or renewal of security for completion of any development improvements;
3. Changes of more than 25% per year in the assessed valuation of the property, improvement district assessments, homeowner assessments or utility charges;
4. Revisions to restrictive covenants affecting the development;
5. Annexation of additional property into a development;
6. The creation of utility or access easements over a portion of the development;
7. Land use changes adjacent to or within ¼ mile of the development boundaries;
8. Annexation of any development land by a municipality;
9. An extension of 30 days or less of the estimated schedule for completion of improvements
10. When the developer's water system or sewer system has consistent or frequent problems operating in compliance with the standards and requirements of ADEQ or its designee;
11. An increase by more than 10% in the estimated costs related to the improvements that required a change to the assurances of completion;
12. Any new lien or encumbrance against more than 1 lot unless the new lien or encumbrance includes an unconditional and individual lot release provision. The encumbrance of a mechanics lien that is bonded over in accordance with applicable law and that ceases to cloud title is not a material change.

C. The Department, pursuant to A.R.S. § 32-2157, may issue a formal order suspending sales if a material change occurs and an amendment to the developer's existing application or public report is required by the Department. The Department shall consider the following in determining whether issuance of a formal order is appropriate:
   1. The developer signs a statement agreeing not to enter into new sales contracts,
   2. The developer applies for and obtains permission to continue sales efforts under a conditional sales exemption or on a lot reservation basis with all new buyers' obligations being conditioned upon the developer obtaining an amended or new public report and the buyer approving the amended or new public report.

D. Cancellation and rescission of a sales contract.
   1. If the developer amends the application or public report because of a material change to the development plan, a purchaser may, pursuant to A.R.S. § 32-2184(B), cancel or rescind the purchase within 10 days after receiving written notice from the developer of the material change.
   2. If the developer was not aware of and did not cause the material change, the purchaser may cancel the sales contract if the material change would adversely affect an occupant's health, safety or ability to make designated use of the lot.

E. Amending an application or public report. Any developer who has filed an application or obtained a public report may amend that application or public report by providing payment of the applicable amendment fee and the following notarized information:
   1. The name and registration number of the development;
   2. The name and signature of the developer;
   3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
   4. The status of the sale as prescribed in subsection (C).

F. Completion Date Extension.
   1. A developer may apply for an amendment to the public report to extend the completion date of any improvement providing:
      a. All purchasers are given written notice of the completion status of the improvement and those purchasers with contracts in escrow have the option to cancel their purchase.
      b. The Department concludes there would be no harm to the public or to existing purchasers.
   2. An affidavit attesting that the developer has provided the purchaser with the written notice of the completion status of an improvement shall accompany the application to amend the public report.
   3. Any application to extend the completion date beyond the first extension shall include a letter from each of the following, attesting that there is no objection to the extension:
      a. The city or county engineer;
      b. Each purchaser or owner.
   4. If an amendment or extension is disallowed, the developer shall suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

G. If an application to amend is denied, the Department shall notify the developer in writing of the statutory basis for the denial and of the developer's right to a fair hearing.

~~R4-28-1201.~~ R4-28-B1204.~~General provisions~~ Contiguous Parcels

~~A.~~ ~~If two~~ Except for lots in a platted subdivision, if 2 or more contiguous parcels of land are acquired by a single owner, they shall ~~thereafter~~ be considered ~~to be~~ a single parcel for purposes of subdivision laws.

~~B. A licensee shall not use the term "acre", either alone or modified, unless referring to quantities of land representing 43,560 square feet as an "acre".~~

R4-28-B1205. Filing with HUD

When requesting that a subdivision public report be certified by the Department for filing with HUD, the subdivider shall comply with and satisfy the terms, conditions and requirements of the HUD certification agreement.

R4-28-B1206. Subsequent Owner

A. Any developer who is a successor in interest to 6 or more lots within a subdivision on which the Department previously issued a public report shall, except as provided in A.R.S. § 32-2181.02, file an application for and obtain a new public report before offering or selling any lot.

B. Any developer who is a successor in interest to 6 or more parcels within an unsubdivided land development on which the Department previously issued a public report shall file an application for and obtain a new public report before offering or selling any parcel.

C. Any developer who is a successor in interest to 12 or more time-share intervals within a time-share project on which the Department previously issued a public report shall file an application for and obtain a new public report, before offering or selling any interval.

D. The Department shall not issue a new public report to a subsequent owner in a development where the previous developer has failed to complete proposed improvements in

accordance with estimated completion dates specified in the previously issued public report until 1 of the following occurs:

1. The subsequent owner makes financial arrangements, as described in R4-28-A1211 in favor of the local governmental authority and for the benefit of purchaser, securing the owner's promise to complete the previously proposed improvements by a designated date; or
2. The subsequent owner becomes obligated to place all sales funds in a neutral escrow depository until the Department is furnished satisfactory evidence that all proposed improvements have been completed or accepted by the city or county; or
3. Permission is obtained by all previous purchasers in the development for completion of the proposed improvements by the new designated date for completion; or
4. The subsequent owner establishes to the satisfaction of the Department that adequate financial arrangements have been made to assure completion of the proposed improvements by the new designated date for completion.

E. A developer who is a subsequent owner to property that is the subject of a pending application for public report shall not replace or be substituted for the applicant for that application.

R4-28-B1207. Public Report Correction

If the public report contains an error, the Department shall correct the report at its own expense. Additional or changed information that was known to the developer before issuance of the report is not an error. No public report shall be corrected after it has been in effect for 10 days. After 10 days, the report shall only be changed through the development amendment process, established in R4-28-B1203, with payment of the applicable amendment fee.

R4-28-B1208. Delinquent Property Taxes

No public report shall be issued on property that is the subject of a Certificate of Purchase for delinquent property taxes.

R4-28-B1209. Options; Blanket Encumbrances; Releases

A. A public report shall not be issued or amended for any lot held under option or subject to a blanket encumbrance if a condition precedent to the optionee's right to acquire the lot or to the release of the lot from the lien of the blanket encumbrance shows that the lot shall:
   1. Be acquired or released in a particular sequence;
   2. Be acquired or released only after 1 or more other lots have been previously acquired or released;
   3. Not be released if the encumbrance is in default because of a cross-default provision contained in the encumbrance;

B. A public report may be issued if the payment of a premium is required in order to permit the acquisition or release of the lot.

C. When a blanket encumbrance clouds title to a development, the development application shall contain a written statement from the holder of the blanket encumbrance of the provisions that enable a buyer to acquire title to a lot, free of the lien of the blanket encumbrance.

R4-28-B1210. Earnest Money

Earnest money and down payments shall be deposited in a neutral depository if:

1. The seller is in bankruptcy;
2. The sale is conditional pursuant to R4-28-B1202;
3. The Certificate of Occupancy program or its equivalent is used for assurance of completion of improvements;
4. The Department perceives a risk to the buyer.

R4-28-B1211. Recordkeeping

If real property in a development is sold or leased by a developer without the services of a listing or selling broker, the developer shall keep all records as required by A.R.S. § 32-2151.01(A) and (C).

ARTICLE 13. ~~HEARINGS: RULES OF PRACTICE AND~~ ADMINISTRATIVE PROCEDURES

~~**R4-28-1301. Commencement of action**~~

~~A. A hearing may be commenced:~~
   ~~1. By an applicant for a license, pursuant to A.R.S. § 41-1065; or~~
   ~~2. Upon the filing of charges pursuant to A.R.S. § 32-2157 by either the Commissioner, the Assistant Commissioner, or an authorized Deputy Commissioner.~~

~~B. In the case of a proceeding commenced by an applicant, the written request for a hearing shall be construed to be the complaint. Upon its receipt, the Commissioner shall cause a hearing thereon to be scheduled promptly. He shall give written notice of the date, time, and place thereof to the applicant in accordance with the requirements of A.R.S. § 41-1061, and in lieu of an answer, shall set forth the grounds for the application denial. When the hearing is commenced by the Commissioner, the Assistant Commissioner, or an authorized deputy, the party or parties against whom the charges are filed shall be given notice of the date, time, and place set for hearing at the time of service of complaint.~~

R4-28-1302. Service of ~~pleadings subsequent to complaint and notice~~ Pleadings Subsequent to Complaint and Notice

A. ~~How service made: Service of documents subsequent to complaint and notice under these rules (except subpoenas, which may be personally served) shall be made by personal service on, or by mail addressed to, the Department, the party or his attorney or other agent for service.~~ Service of pleadings subsequent to complaint and notice of hearing shall be ~~deemed~~ made ~~at the time of~~ by personal service~~,~~ or~~, if mailed,~~ by mail to the last known address of record of the party or the party's counsel ~~when received by the Department~~. If ~~a party makes~~ service is made by mail, ~~any specific limitations on the time within which the person on whom such mail service has been made may respond thereto~~ response time shall be increased by ~~three (3)~~ 5 days. Service by mail is complete upon mailing.

~~B. Proof of service: Proof of service must be made by filing with the Commissioner a statement in writing that service has been made.~~

~~C.~~B. ~~Copies of all pleadings or briefs which are filed under these rules shall be served upon the Attorney General.~~ Any person filing a pleading or brief with the Department shall also file with the Attorney General.

R4-28-1303. Information ~~obtained in investigation~~ Obtained In An Investigation

~~Information~~ Any information or documents obtained by the Department in ~~the course of any~~ an examination or investigation shall, unless made a matter of public record, be ~~deemed to be~~ confidential. Officers and employees of the Department ~~are hereby prohibited from making such~~ shall not make this confidential information or documents available to anyone other than the Attorney General or ~~his~~ the Attorney General's representative, or a member, officer, or employee of the Department, unless the Commissioner authorizes the disclosure of ~~such~~ the information or the production of ~~such~~ the documents as not being contrary to the public interest.

R4-28-1304. ~~Answers; motions for more definite statement~~ Response; Default

~~A. Time to file Answer: A party respondent shall file an Answer to the complaint within the time provided and in the manner prescribed pursuant to A.R.S. § 32-2157.~~

~~B.~~A. ~~Requirements of Answer; effect of failure to deny: Unless otherwise directed by the Commissioner, an Answer~~ A response ~~filed pursuant to A.R.S. § 32-2157~~ shall specifically admit, deny, or state that the party does not have, or is unable to obtain, sufficient information to admit or deny each allegation in the complaint. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part of an allegation, ~~he~~ the party shall admit so much of it as is true and shall deny the remainder. ~~Any affirmative defenses shall be stated in the Answer~~.

~~C. Motion for more definite statement: Such a motion shall state the respects in which, and the reasons why, each such matter of fact should be required to be made more definite. If the motion is granted, the order granting such motion will set the time in which such statement, and any answer thereto, shall be filed; the answer shall be filed no less than five calendar days following the date of the amended statement.~~

~~D.~~B. ~~Effect of failure to file Answer:~~ If the ~~respondent~~ party fails to file a ~~notice of defense~~ response or after being served notice, fails to appear at a hearing ~~after receiving notice thereof~~ within the time provided by the statute under which the hearing is commenced, the ~~Commissioner, Assistant Commissioner, or Deputy Commissioner~~ Department may file an Affidavit of Default against the ~~respondent~~ party, and ~~the Commissioner may~~ ~~then~~ proceed to take ~~any~~ action against the ~~respondent~~ party ~~authorized by law,~~ based upon the allegations of the charges ~~against the respondent~~. This action may be taken ~~prior to~~ before the hearing date ~~set forth~~ established in the ~~Department's~~ Notice of Hearing. The ~~respondent~~ party may file a motion to vacate ~~such~~ the default and any action taken by the Commissioner within 15 days after receiving a copy of the default and action or order by the Commissioner. For good cause, the Commissioner ~~or administrative law judge~~ may vacate a default and any action taken ~~thereon~~ and reschedule a hearing.

~~E.~~C. ~~Signature on Answer; requirement and effect:~~ Every ~~Answer~~ response filed pursuant to this ~~rule~~ Section shall be signed by the filing party ~~filing it~~ or by at least ~~one~~ 1 attorney, in ~~his~~ the attorney's individual name, who represents ~~such~~ the party, and shall be verified.

R4-28-1305. Notice of Appearance ~~and practice before Department~~ Of Counsel

A. A party may ~~appear on his own behalf~~ participate in the party's own behalf or be represented by a member of the State Bar of Arizona. ~~The Attorney General may make an appearance.~~

B. ~~Notice of appearance: When an attorney other than the Attorney General or his representative appears before the Commissioner or administrative law judge in a representative capacity, he shall advise the Commissioner or administrative law judge of his name, address and telephone number and the name and address of the person on whose behalf he appears.~~ Any person intending to appear at a contested case hearing or appealable agency action as counsel or representative of a party shall file a Notice of Appearance which shall advise the Department of the person's intent to appear on behalf of a party. The notice shall be filed with the Office of Administrative Hearings and served on all parties and shall contain:

1. The title of the case,
2. The name of the agency ordering the hearing,
3. The current address and telephone number of the person appearing, and
4. The name of the party on behalf the person is appearing.

~~C. Contemptuous conduct: Contemptuous conduct at any hearing before the Commissioner or an administrative law judge shall be grounds for exclusion from said hearing.~~

~~R4-28-1306. Evidence~~

~~A. Presentation and admission of evidence: All witnesses at a hearing shall testify under oath or affirmation. The parties may make an opening and closing statement (opening argument and summation). Evidence in support of the charges or Commissioner's order or application denial shall be presented first, then the respondent may present evidence in support of his position, and then there may be rebuttal and surrebuttal evidence. The parties may present evidence and conduct cross-examination. The administrative law judge shall rule upon the admissibility of evidence sua sponte or upon objection.~~

~~B. Subpoena; motions to quash or modify:~~

~~1. The Commissioner, the administrative law judge, or any other officer designated by the Commissioner for such purposes in connection with any hearing may:~~

~~a. Issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material, and~~

~~b. Issue Subpoenas duces tecum, requiring the production of documentary or other tangible evidence at any designated place of hearing, upon written application by any party, which shall include a showing of the general relevance, materiality and reasonable particularity of the documentary or other tangible evidence desired, and the facts to be proved by them.~~

~~c. Subpoenas shall be prepared by the party requesting such issuance.~~

~~2. Process issued by the Commissioner may be served by such persons and in such manner as authorized by the Arizona Revised Statutes relating to the state Real Estate Department. It shall be the responsibility of the party requesting the subpoena to serve it.~~

~~3. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such subpoena, move the administrative law judge or the Commissioner to quash or modify such subpoena, accompanying such motion with a brief statement of reasons therefor. The Commissioner or the administrative law judge shall thereafter rule on such motion.~~

~~C. Judicial notice: The administrative law judge may take judicial notice of any matter which might be judicially noticed by a superior court of the state of Arizona, any matter in the public official records of the Commissioner or Department, or any matter which is peculiarly within the knowledge of the Department as an expert body.~~

~~D. Depositions: Depositions may be taken as provided by A.R.S. § 32-2158(A).~~

R4-28-1307. ~~Hearings~~ Consolidation of Procedures

~~A. Presiding officers, public hearings: All hearings shall be presided over by an administrative law judge. All such hearings shall be open to the public except as provided otherwise by R4-28-1305(C). The administrative law judge shall be empowered to administer oaths to witnesses.~~

~~B. Disqualification of administrative law judge: Any challenge of the administrative law judge shall be made no later than ten days prior to the commencement of the hearing and the reasons therefor set forth in writing. The challenge shall be ruled upon by the Commissioner prior to the hearing.~~

~~C. Functions of administrative law judge: The administrative law judge shall regulate the course of the hearing in an impartial manner and shall rule upon procedural and evidentiary matters incidental thereto. The administrative law judge may question witnesses. Upon motion of any party, a witness may be excluded from the hearing by the administrative law judge prior to that witness' testimony. The Commissioner may be present at any hearing.~~

~~D. Rulings by administrative law judge: All motions and objections made during the course of a hearing shall be made to the administrative law judge, who shall rule thereon or take them under advisement for later determination. Objections to the admission or exclusion of evidence must be made on the record and shall state the grounds of objections relied upon.~~

~~E. Stenographic transcription of hearings: The proceedings at hearings shall be stenographically reported by a certified court reporter, or mechanically recorded under the direction of the administrative law judge who shall retain control of the used reel or tape following conclusion of the hearing.~~

~~F. Filing of motions: Any motions pertaining to a hearing shall be filed with the Commissioner or administrative law judge in writing, provided, however, that motions during a hearing may be oral. In the case of prehearing motions, any party may file an answering memorandum of authorities within five days after service upon him of such motion or other application unless otherwise directed by the Commissioner or administrative law judge. Rulings on motions shall be based on the memoranda. No oral argument will be heard on such matters filed prior to the commencement of the hearing unless the Commissioner or administrative law judge so directs.~~

~~G. Intervention: Upon timely application, anyone may be permitted to intervene in a hearing when a statute confers a right to intervene, when an applicant's claim or defense and the main proceedings have a question of law or fact in common, or when such intervention would serve the interests of justice, at the discretion of the Commissioner or administrative law judge. A person desiring to intervene shall serve a motion to intervene on the Commissioner or administrative law judge and upon all parties affected thereby.~~

~~H.~~ Consolidation: ~~By order of the~~ The Commissioner or the administrative law judge~~,~~ may consolidate proceedings involving a common question of fact or a common respondent ~~may be consolidated for hearing of any or all of the matters at issue where such~~ if the consolidation ~~may tend to~~ will avoid unnecessary costs or delay or will not adversely affect the rights of any party.

~~R4-28-1308. Extensions of time~~

~~A. Except as otherwise provided by law, the Commissioner or administrative law judge, for good cause, may extend any time limits prescribed by these rules.~~

~~B. The Commissioner or administrative law judge may postpone commencement of a hearing to a subsequent time and place upon agreement of the parties thereto or upon request therefor by any of the parties to the proceeding. Following such initial adjournment of the hearing date, no further adjournments shall be granted any party except upon written motion addressed to the Commissioner or the administrative law judge accompanied by a full statement of the reasons therefor.~~

~~C. For the purpose of calculating the time set forth in R4-28-1309 and R4-28-1312, conclusion of a hearing shall mean the close of evidentiary proceedings plus any additional time granted any party by the Commissioner or administrative law judge to submit exhibits or memoranda for consideration.~~

~~R4-28-1309. Opinion of administrative law judge and service to parties~~

~~A. Within 45 days after the conclusion of a hearing, the administrative law judge shall issue a written opinion which shall include the administrative law judge's findings of facts and conclusions of law. The opinion shall be transmitted to the Commissioner for final order. If the Commissioner is the administrative law judge, the opinion shall include an order adjudicating the complaint which may impose any sanctions or penalties authorized by law.~~

~~B. Within 15 days of the transmitting of the administrative law judge's opinion, the Commissioner shall issue his written order which shall adjudicate the complaint and may impose any sanctions or penalties authorized by law. Copies of the administrative law judge's opinion and the Commissioner's order shall be served upon the parties to the hearing, including the Attorney General, as provided by R4-28-1302.~~

R4-28-1310. ~~Request for rehearing~~ Rehearing or Review of Decision; Response; Decision

A. ~~Request for rehearing: Within 15 days after service of the Commissioner's final order, any aggrieved party may request a new hearing. Such request shall be in writing and shall be filed with the Department as provided by R4-28-101, and a copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the claim of error.~~ Unless otherwise provided by law or rule, any party to a hearing before the Department who is aggrieved by a decision rendered in a case may, pursuant to A.R.S. § 41-1092.09, file with the Commissioner a written request for rehearing or review of the decision. The request shall specify the particular grounds for rehearing or review. The requesting party shall serve copies upon all other parties. A request for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commissioner. An affidavit may be attached to and filed with the response and shall not be filed thereafter unless leave for later filing of affidavits is granted by the Commissioner.

B. ~~Grounds for request for rehearing: A request for~~ rehearing or review of the decision ~~shall~~ may be ~~based upon one or more~~ granted for any one of the following ~~grounds~~ causes which ~~have~~ materially affected the ~~rights of a party~~ requesting party's rights:

1. Irregularity in the ~~hearing~~ proceedings ~~or Department investigation,~~ or any order or abuse of discretion by the administrative law judge, whereby the party filing the claim of error was deprived of a fair hearing;
2. Misconduct by the Department, administrative law judge or ~~another party to the hearing~~ the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. ~~Material~~ Newly discovered material evidence~~, newly discovered,~~ which with reasonable diligence could not have been discovered and produced at the original hearing;
5. Excessive or insufficient ~~sanctions or~~ penalties ~~imposed~~;

6. Error in the admission or rejection of evidence~~,~~ or errors of law occurring ~~at the hearing or~~ during the ~~progress of the action~~ proceeding;
7. That the adjudication, penalty or sanction was the result of bias or ~~prejudice of the administrative law judge or the Commissioner~~;
8. That the adjudication, penalty or sanction is not ~~justified~~ supported by the evidence or is contrary to law.

C. Presenting specific claims of error, affidavits and relief sought:
1. Each request for rehearing shall specify which of the ~~eight~~ grounds ~~of~~ listed in subsection ~~(B)~~ (D) it is based upon and shall ~~set forth~~ establish specific facts and~~/or~~ laws in support of the claim. Each request may cite relevant portions of testimony by reference to pages or lines of the reporter's transcript of the hearing and may cite hearing exhibits by reference to the exhibit number.
2. When a request for rehearing is based upon an affidavits, ~~they~~ it shall be attached to and filed with the request unless leave for later filing of an affidavits is granted by the ~~administrative law judge~~ Commissioner. ~~Such~~ The leave may be granted ex parte.
3. Each request for rehearing ~~should also~~ shall specify the specific relief sought by the request, such as a different adjudication, sanction or penalty, a new hearing, a dismissal of the complaint, or other relief. A request for rehearing may seek multiple forms of relief, in the alternative.

~~D. All requests for rehearing from the Commissioner's final order which may be presented under this rule, which are not timely made, shall be deemed to be waived for the purpose of judicial review, and a party who fails to request a rehearing from the Commissioner's final order under this rule shall thereafter be barred from raising such a claim in any proceeding in which the Commissioner, administrative law judge, or Department is a party.~~

D. Any party may file a written response to the request. An affidavit may be attached to and filed with the response and shall not be filed thereafter unless leave for later filing of affidavits is granted by the Commissioner. The original response shall be filed with the Department pursuant to R4-28-102, within 5 days of the request, and a copy shall be served upon all other parties to the hearing, including the Attorney General, if the Attorney General is not the party filing the response.

E. Within 30 days after a decision is rendered, the Commissioner may, on the Commissioner's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

F. Upon review of a request for rehearing or review of the decision, and any response, the Commissioner shall issue a ruling granting or denying the request. If granted, the Commissioner may modify the decision or grant a rehearing. The Commissioner shall issue a ruling on the request within 15 days after receipt of the request. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

~~**R4-28-1311. Response to request for rehearing**~~

~~A. Response to request for rehearing: Each party served with a request for rehearing pursuant to R4-28-1310(A) shall be permitted to file a response within 15 days after service. This response shall be designated as a "response to request for rehearing" and shall be in writing. Affidavits may be attached to and filed with the response and shall not be filed thereafter unless leave for later filing of affidavits is granted by the administrative law judge or Commissioner. Such leave may be granted ex parte. The original shall be filed with the Department as provided by R4-28-101, and one copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the response.~~

~~B. Hearing or oral argument on request for rehearing: The administrative law judge or Commissioner may, in his discretion, conduct a hearing or hear oral argument on a request for rehearing either upon motion of a party or upon his own initiative.~~

~~C. Time for ruling upon request for rehearing: The administrative law judge or Commissioner shall rule upon a request for rehearing:~~
~~1. Within 25 days of its filing if no response is filed thereto, or~~
~~2. Within 15 days of the filing of a response thereto, or~~
~~3. Within 15 days of any hearing or oral argument.~~

~~D. Limitation of issues to be considered in new hearing. A new hearing, if granted, shall be limited to the question or issue set forth in the order granting rehearing if such question or issue is separable. If a new hearing is granted solely because the sanction or penalty imposed is or may be excessive or inadequate, then the new hearing shall be limited to the question of the sanction or penalty which may be imposed.~~

~~**R4-28-1312. Final action by Commissioner**~~

~~A. The Commissioner's order adjudicating the complaint which may have imposed any sanction or penalty, along with all rulings upon any request for rehearing, the final order resulting therefrom shall constitute a "decision" of the Commissioner for the purpose of judicial review pursuant to A.R.S. § 32-2159(A).~~

~~B. Effective date of Commissioner's orders: Except as provided otherwise by A.R.S. § 32-2157(A) 32-2157(B), all orders by the Commissioner shall become effective 15 days after service of the Commissioner's order upon the parties, unless a request for rehearing is filed, in which event the order of the Commissioner shall become effective either:~~
~~1. Fifteen days after service upon the parties of the Commissioner's ruling on the request for rehearing, or~~
~~2. Fifteen days after service upon the parties of any further order of the Commissioner which is authorized by, or based upon, a ruling by the Commissioner on a request for rehearing.~~

R4-28-1313. Correction of ~~clerical mistakes~~ Clerical Mistakes

Clerical mistakes in opinions, orders, rulings, any process issued by the Department, or other parts of the record, and errors ~~therein~~ arising from oversight or omission, may be corrected by the administrative law judge before transmission of the Department hearing file to the Commissioner, or by the Commissioner after ~~such~~ transmission of the file, either upon the initiative of the administrative law judge or Commissioner, or upon motion of any party.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD OF PRIVATE POSTSECONDARY EDUCATION

PREAMBLE

1. Sections Affected — Rulemaking Action

R4-39-108	Amend
R4-39-109	Repeal
R4-39-109	Amend
R4-39-110	Renumber
R4-39-110	Amend
R4-39-111	Renumber
R4-39-111	Amend
R4-39-112	Renumber

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-003

Implementing statute: A.R.S. §§ 32-3021, 32-3022, 32-3023, 32-3024, 32-3025, 32-3026, 32-3027, and 32-3051

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Teri Candelaria, Executive Director

Address: Arizona State Board for Private Postsecondary Education
1400 West Washington, Room 260
Phoenix, Arizona 85007

Telephone: (602) 542-5709

Fax: (602) 542-1253

4. An explanation of the rule, including the agency's reasons for initiating the rule:

The agency is amending 5 rules within Article 1. The existing rules within Article 1 regarding license renewals and changes to licensed programs, locations and ownership are being revised to clarify application content requirements, clarify requirements for continued licensure, to conform to current board policies and procedures and to conform to rule drafting style. The rule regarding a Change of Ownership is also amended to establish a deadline to submit the Change of Ownership application to the Board.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

The agency anticipates that the proposed rule amendments will have no impact on the board, any other state agency or department, political subdivisions, or business in this state, private persons, or consumers. The proposed rule amendments are technical in nature and administrative in nature and present neither a benefit nor a cost to the board or any other state agency or department, political subdivision, or business in this state, private persons, or consumers. The proposed rule amendments will have no probable impact on public or private employment in this state. All of the persons and institutions subject to licensure by this board are generally characterized as small businesses. Therefore, all licensed schools, colleges and universities operating in this state will be subject to the proposed rule amendments. The proposed rule amendments, however, will have no probable impact on small businesses, private persons, or consumers. The proposed rule amendments will have no probable effect on state revenues or board revenues. The agency is not aware of any other viable alternative methods to achieving the purpose of the proposed rule amendments.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Teri Candelaria, Executive Director

Address: Arizona State Board for Private Postsecondary Education
1400 W. Washington Street, Room 260
Phoenix, Arizona 85007

Telephone: (602) 542-5709

Fax: (602) 542-1253

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: August 19, 1998

Time: 10 a.m. to 10:30 a.m.

Location: 800 West Washington Street, 1st Floor Auditorium
Phoenix, Arizona 85007

Nature: Oral Proceedings before the Arizona State Board for Private Postsecondary Education

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
A.R.S. §§ 32-3021(B), 32-3022, R4-39-103(C), R4-39-105(D), and R4-39-107(D) are incorporated by reference in R4-39-108.

A.R.S. §§ 32-3021 through 32-3051 are incorporated by reference in R4-39-109.

R4-39-103(B)(2), (B)(3), (B)(4) and R4-39-104(B)(5), (B)(6), (B)(9), (B)(11) and (B)(15), R4-39-105(B)(2), (B)(3), R4-39-107(C)(2) through (C)(4) and 32-3021 through 32-3051 are incorporated by reference in R4-39-110.

11. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD OF PRIVATE POSTSECONDARY EDUCATION

ARTICLE 1. DEFINITIONS, LICENSURE AND REPORTING

Section
R4-39-108. License Renewals
~~R4-39-109. Reports~~
~~R4-39-110~~R4-39-109. Supplementary Supplemental License Applications
~~R4-39-111~~R4-39-110. Change of Ownership
~~R4-39-112~~R4-39-111. Honorary Degrees

ARTICLE 1. DEFINITIONS, LICENSURE AND REPORTING

R4-39-108. License Renewals

~~Completed, verified renewal applications shall be submitted to the board no later than forty-five days prior to the expiration of the license.~~

A private vocational or degree-granting institution shall submit a complete, verified license renewal application to the Board no later than 45 days prior to the expiration of the license. The license renewal application shall include the following:

A. A private, accredited, vocational institution shall demonstrate compliance with A.R.S. § 32-3021(B) and annually submit to the board for verification, review and administrative action documents specified in R4-39-103(C).

B. A private, accredited, degree-granting institution shall demonstrate compliance with A.R.S. § 32-3022(B) and annually submit to the board for verification, review and administrative action documents specified in R4-39-103(C).

C. A private, non-accredited, vocational institution shall demonstrated compliance with A.R.S. § 32-3021(B) and annually submit to the Board for verification, review and administrative action documents specified in R4-39-105(D).

D. An existing, private, non-accredited degree-granting institution shall demonstrate compliance with A.R.S. § 32-3021(B) and shall annually submit to the Board for verification, review and administrative action documents specified in R4-39-107(D).

Failure ~~to do so~~ to submit the annual license renewal application and required documents may result in disciplinary action. If board staff ~~of the board~~ determines ~~that~~ there is cause to bring the question of renewal to the board, board staff ~~may~~ shall set the matter on the board agenda for a public meeting. The board may require, as a condition of renewal, submission of additional reports, ~~financial statements~~ or other relevant information and the personal appearance of representatives of the institution before the board.

~~**R4-39-109. Reports**~~

~~A report containing the following information for the prior year shall be submitted to the board by all institutions who have operated in Arizona for at least one year by February 15 of each year:~~

~~1. Maximum enrollment.~~
~~2. Number of students graduated.~~
~~3. Number of students withdrawn or expelled.~~
~~4. Approximate market value of real estate, equipment and inventory.~~
~~5. Total number of employees, including staff, faculty, agents and representative.~~
~~6. Total annual wages, salaries and commissions.~~
~~7. Total tuition contracted for.~~

~~R4-39-110~~R4-39-109. Supplemental License Applications

A. Every private vocational or degree-granting institution shall submit to the board ~~a supplementary application~~ an application for a supplemental license for approval of any additional vocational program, degree program, change of location or change of name or the institution at least forty-five (45) days ~~prior to the proposed change~~ before:

1. Operating an unlicensed, new or additional vocational or degree-granting program;
2. Operating from an unlicensed, new or additional location;
3. Changing the name of the licensed institution.

B. The board shall grant a supplemental license to a private vocational or degree-granting institution if the institution demonstrates that a supplemental license application submitted under subsection (A) is in compliance with A.R.S. § 32-3021 through 32-3051.

~~R4-39-111~~R4-39-110. Change of Ownership

~~A. A licensee must submit a new application upon a change of ownership.~~

A. A private vocational or degree-granting institution shall submit an application for a supplemental license to the board to continue to operate vocational and degree-granting programs upon a change of ownership within 60 days.

B. For a private, accredited vocational or degree-granting institution, an application for a change of ownership shall include the following:
   1. A complete, verified application for a supplemental license.
   2. Documents specified in R4-39-103(B)(2), (B)(3) and (B)(4) and Rule 4-39-104(B)(5), (B)(6), (B)(9), (B)(11) and (B)(15).

C. For a private, non-accredited vocational institution, an application for a supplemental license for a change of ownership shall include the following:
   1. A complete, verified application for a supplemental license.
   2. Documents specified in Rule R4-39-105(B)(2) and (B)(3).

D. For a private, non-accredited degree-granting institution, an application for a supplemental license for a change of ownership shall include:
   1. A complete, verified application for a supplemental license.
   2. Documents specified in Rule 4-39-107(C)(2) through (C)(4).

E. The Board shall grant a supplemental license for a change of ownership to a licensed institution if the licensed institution demonstrates the application for a supplemental license for a change of ownership submitted under subsection (B), (C), or (D) is in compliance with A.R.S. § 32-3021 through 3051.

~~B.~~F. Ownership of an institution shall be considered ~~to have~~ changed if:
   1. In the case of ownership by a sole proprietor, when more than a 20% interest of beneficial interest in an institution ~~has been~~ is sold or transferred;
   2. In the case of ownership by a partnership or a corporation when more than 20% of the stock, interest or beneficial interest ~~has been~~ is sold or transferred;
   3. When the board of directors, officers, shareholders or controlling influence ~~has~~ changed~~s~~ to such an extent as to significantly alter the management and control of the institution.

~~C.~~G. ~~The holder of a license~~ A private vocational or degree-granting institution shall file a written notice of a change of ownership letter with the board no later than 7 days after the change in ownership.

~~D.~~H. Notwithstanding subsection (B), (C), or (D), a licensed institution shall notify the board of any transfer or an ownership or beneficial interest in a ~~licensed~~ private vocational or degree-granting institution of more than 10% but less than 20% ~~shall be reported to the board~~ within 7 days. ~~Such~~ The notice shall include a resume of each new owner or beneficial interest holder.

~~R4-39-112~~R4-39-111. Honorary Degrees

A. Only currently licensed, accredited degree-granting institutions may apply to award honorary degrees. ~~Each honorary degree shall prominently bear on its face the denotation that it is an honorary degree. Each such license shall include the authority to award honorary degrees.~~ A currently licensed, private, accredited degree-granting institution shall submit an application for a supplemental license for a new program to the board for verification, review and administrative action before granting or offering to grant an honorary degree.

B. To be granted a supplemental license, the licensed private, accredited degree-granting institution shall not award an honorary degree unless the honorary degree is consistent with the institution's currently licensed degree-granting programs.

C. An honorary degree shall identify in its title or name that it is an honorary degree and shall bear on its face denotation that it is an honorary degree.

Notice of Proposed Rulemaking

TITLE 6. ECONOMIC SECURITY

CHAPTER 15. DEPARTMENT OF ECONOMIC SECURITY
ARIZONA WORKS PROGRAM

Preamble

1. Sections Affected	Rulemaking Action
Article 1	New Article
R6-15-101	New Section
R6-15-102	New Section
R6-15-103	New Section
R6-15-104	New Section
R6-15-105	New Section
R6-15-106	New Section
R6-15-107	New Section
R6-15-108	New Section
R6-15-109	New Section
R6-15-110	New Section

R6-15-111	New Section
Article 2	New Article
R6-15-201	New Section
R6-15-202	New Section
R6-15-203	New Section
R6-15-204	New Section
R6-15-205	New Section
R6-15-206	New Section
R6-15-207	New Section
R6-15-208	New Section
Article 3	New Article
R6-15-301	New Section
R6-15-302	New Section
R6-15-303	New Section
R6-15-304	New Section
R6-15-305	New Section
R6-15-306	New Section
R6-15-307	New Section
R6-15-308	New Section
R6-15-309	New Section
R6-15-310	New Section
R6-15-311	New Section
R6-15-312	New Section
R6-15-313	New Section
Article 4	New Article
R6-15-401	New Section
R6-15-402	New Section
R6-15-403	New Section
R6-15-404	New Section
Article 5	New Article
R6-15-501	New Section
R6-15-502	New Section
R6-15-503	New Section
R6-15-504	New Section
R6-15-505	New Section
R6-15-506	New Section
Article 6	New Article
R6-15-601	New Section
R6-15-602	New Section
R6-15-603	New Section
R6-15-604	New Section
R6-15-605	New Section
R6-15-606	New Section
R6-15-607	New Section
R6-15-608	New Section
R6-15-609	New Section
R6-15-610	New Section
R6-15-611	New Section
Article 7	New Article
R6-15-701	New Section
R6-15-702	New Section
R6-15-703	New Section
R6-15-704	New Section
R6-15-705	New Section
R6-15-706	New Section
Article 8	New Article
R6-15-801	New Section
R6-15-802	New Section
R6-15-803	New Section
R6-15-804	New Section
R6-15-805	New Section
Article 9	New Article
R6-15-901	New Section
R6-15-902	New Section
R6-15-903	New Section

R6-15-904	New Section
R6-15-905	New Section
R6-15-906	New Section
R6-15-907	New Section
R6-15-908	New Section
Article 10	New Article
R6-15-1001	New Section
R6-15-1002	New Section
R6-15-1003	New Section
R6-15-1004	New Section
Article 11	New Article
R6-15-1101	New Section
R6-15-1102	New Section
R6-15-1103	New Section
R6-15-1104	New Section
R6-15-1105	New Section
R6-15-1106	New Section
Article 12	New Article
R6-15-1201	New Section
R6-15-1202	New Section
R6-15-1203	New Section

2. **The specific authority for rulemaking, including both the authorizing statute (general)and the statutes the rules are implementing (specific):**

   Authorizing Statutes: A.R.S. §§ 41-1003, 1954(A)(3), 46-134(A)(12), 46-346(A)(4), 46-349(K), and 46-352(A)(B) and (C)

   Implementing Statutes: A.R.S. §§ 46-341 through 46-355

3. **The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Vista Thompson Brown

   Address: P.O. Box 6123, Site Code 837A
   Phoenix, AZ 85005

   Telephone: (602) 542-6555

   Fax: (602) 542-6000

   E-mail vovb5015@de.state.az.us

4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

   Laws 1997, Chapter 300 (SB1357) as amended by Laws 1998, Chapter 211 (SB 1082) implementing the Arizona Works Program. The Department of Economic Security was given the authority to establish administrative rules for the Arizona Works Program. Arizona Works is a work-based program to provide Temporary Assistance for Needy Families (TANF) cash assistance and employment services to qualified, low-income recipients in eastern Maricopa County. A private contractor will operate the Arizona Works pilot project. The rules set forth the eligibility and operational guidelines for all aspects of the Arizona Works Program. The rules include a section with terminology drawn from federal law, state law, and from the actual language used in operation of the Arizona Works program. The rules set forth standards regarding the disclosure of confidential information concerning Arizona Works applicants and recipients. The rules explain all aspects of the program including: (1) the application process; (2) the specific geographic scope of the pilot project; (3) non-financial eligibility factors; (4) financial eligibility factors; (5) the determination of eligibility and benefit amount; (6) work participation requirements; (7) cash payments; (8) overpayments; (9) client appeals against agency decisions; (10) intentional Program Violations; and (11) the subsidized employment program for Arizona Works. The rules set clear, legally enforceable standards and procedures for operation of the Arizona Works Program, which are consistent with federal and state laws governing the program.

5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous granting of authority of a political subdivision of this state.**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   There is no significant impact attributable to the rules. The economic impact results from the statutory mandate to operate the Arizona Works pilot project. Arizona Works will provide TANF cash assistance and employment services to low-income families in eastern Maricopa County. Arizona Works will be funded through a combination of state and federal funds. Taxpayers bear the cost of the program. Low-income children and families receive the benefits and services of the program at no cost. The state agency will bear a minimal cost to write and implement the rules.

7. **The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Vista Thompson Brown

Address:	P.O. Box 6123, Site Code 837A Phoenix, AZ 85005
Telephone:	(602) 542-6555
Fax:	(602) 542-6000
E-mail	vovb5015@de.state.az.us

8. **The time, place, and nature of the proceedings for this adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons, may request an oral proceeding on the proposed rules:**

The Department will accept written comments from now, until the close of record, which is scheduled for 5:00 P.M. on Friday, August 13, 1998. The Department has scheduled the following oral proceedings:

Phoenix; DISTRICT I:

Date:	Thursday, August 13, 1998
Time:	1:30 P.M.
Location:	DES Conference Room 815 North 18th Street Phoenix, AZ

Coordinating Program Manager: Carla Van Cleve, (602) 846-0001

MESA; DISTRICT I-E:

Date:	Thursday, August 13, 1998
Time:	1:30 P.M.
Location:	DES Conference Room 225 East Main, 3rd Floor Mesa, AZ
Contact:	Ruth Ann Buchanan

TUCSON; DISTRICT II:

Date:	Thursday, August 13, 1998
Time:	1:30 P.M.
Location:	DES Conference Room 400 West Congress #420 Tucson

Coordinating Program Manager: Henry Granillo, (520) 628-6810

FLAGSTAFF; DISTRICT III:

Date:	Thursday, August 13, 1998
Time:	1:30 P.M.
Location:	DES Conference Room 220 North LeRoux Flagstaff, AZ

Coordinating Program Manager: Patty Laux, (520) 779-2731 ext. 233

YUMA; DISTRICT IV:

Date:	Thursday, August 13, 1998
Time:	1:30 P.M.
Location:	DES Conference Room 350 West 16th Street Suite 232, Yuma

Coordinating Program Manager: Tim Acuff, (520) 782-4343

CASA GRANDE; DISTRICT V:

Date:	Thursday, August 13, 1998

Time: 1:30 P.M.

Location: DES Conference Room
2510 North Trekell
Casa Grande

Coordinating Program Manager: Dan Van Kuren, (520) 723-4151

BISBEE; DISTRICT VI:

Date: Thursday, August 13, 1998

Time: 1:30 p.m.

Location: DES Conference Room
209 Bisbee Road
Bisbee, AZ

Coordinating Program Manager: Steve Roybal (520) 432-5703

Persons with a disability who wish to participate in the oral proceeding may request accommodation, such as a sign language interpreter by contacting the coordinating program manager named above. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in an alternative format by contacting Vista Thompson Brown at (602) 542-6555, P.O. Box 6123, Site Code 837A, Phoenix, AZ 85005; TDD Relay (800) 367-8939. Requests should be made as early as possible to allow time to arrange the accommodation.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**
Not applicable.

10. **Locations for incorporations by reference in the rules:**
R6-15-101(54)

R6-15-101(56)

R6-15-608

11. **The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 15. DEPARTMENT OF ECONOMIC SECURITY
ARIZONA WORKS PROGRAM

Article 1. General Provisions

Section
R6-15-101. Definitions
R6-15-102. Chapter Scope and Application
R6-15-103. Geographic Scope of Arizona Works
R6-15-104. Eligibility for Pilot; Relocation Outside Pilot Area
R6-15-105. AHCCCS Program
R6-15-106. Food Stamp Program
R6-15-107. Child Care Assistance Program
R6-15-108. General Assistance Program
R6-15-109. EMPOWER Redesign Program
R6-15-110 Nondiscrimination
R6-15-111. Confidentiality

Article 2. Application Process

R6-15-201. Application
R6-15-202. Initial Interview
R6-15-203. Verification of Information
R6-15-204. Home Visits
R6-15-205. Withdrawal of Application; Case Closure
R6-15-206. Processing the Application; Denial, Approval
R6-15-207. Periodic Review
R6-15-208. Cooperation in Providing Information

Article 3. Non-Financial Eligibility Criteria

R6-15-301. Citizenship and Alien Status
R6-15-302. Sponsored Non-Citizens
R6-15-303. Residency
R6-15-304. Application for Other Potential Benefits
R6-15-305. Temporary Absence of a Dependent Child
R6-15-306. Pregnant Women
R6-15-307. Unwed Minor Parents
R6-15-308. Minor Parents; School Attendance
R6-15-309. Assignment of Child Support Rights
R6-15-310. Cooperation with Child Support Enforcement
R6-15-311. Good Cause for Non-Cooperation
R6-15-312. Compliance with Work Requirements
R6-15-313. Strikers

Article 4. Financial Eligibility; Resources

R6-15-401. Treatment of Resources
R6-15-402. Treatment of Resources by Ownership Status
R6-15-403. Excluded Resources

R6-15-404. Resource Transfer; Limits

Article 5. Financial Eligibility; Income

R6-15-501. Treatment of Income; Income Limits
R6-15-502. Income Exclusions
R6-15-503. Special Income Provisions; Child Support, Alimony, or Spousal Maintenance
R6-15-504. Special Income Provisions; Non-Recurring Lump Sum Income
R6-15-505. Calculating Monthly Income
R6-15-506. Earned Income Disregards

Article 6. Work Participation; Employment Levels

R6-15-601. Assessment
R6-15-602. Assignment of Employment Levels
R6-15-603. Work Requirement
R6-15-604. Participants Who Are Temporarily Excused From Work Participation
R6-15-605. Individual Responsibility Plan
R6-15-606. Job Counselor; Assisted Employment Plan
R6-15-607. Education and Training Activities
R6-15-608. Employment Search and Job Readiness Activities
R6-15-609. Participation Deemed to Be Meeting the Work Requirement
R6-15-610. Support Services
R6-15-611. Non-Compliance; Good Cause

Article 7. Eligibility and Payments

R6-15-701. Determining Eligibility
R6-15-702. Notice of Determination
R6-15-703. Benefits for Participants in Employment Positions
R6-15-704. Payment of Benefits for Participation in Levels 3 and 4
R6-15-705. Non-Receipt of Payments
R6-15-706. Protective Payee

Article 8. Changes; Adverse Action

R6-15-801. Reporting Changes
R6-15-802. Sanctions; Applicable to Grant
R6-15-803. Sanctions; Hourly
R6-15-804. Effective Date
R6-15-805. Notice of Adverse Action

Article 9. Appeals

R6-15-901. Entitlement to a Hearing
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ARTICLE 1. GENERAL PROVISIONS

R6-15-101. Definitions

The following definitions apply in this Chapter:

1. "Adequate notice" means a notice that:
   a. Explains the action the Agency intends to take, the reason for the action, the specific authority for the action, and the recipient's appeal rights; and
   b. Is mailed before the effective date of the action.
2. "Adequate and timely notice" means a written notice which contains the information required for an adequate notice and is sent within the time frame provided for a timely notice.
3. "Adverse action" means 1 of the Agency actions described in R6-15-805(A), including action to terminate or reduce a benefit or assistance grant, or change the manner or form in which benefits are provided.
4. *"Agency" means an entity under contract with the Department to operate the Arizona Works program,* A.R.S. § 46-341(1), and is sometimes referred to as the Arizona Works Agency.
5. "AHCCCS" means the "Arizona Health Care Cost Containment System" which is a system established pursuant to A.R.S. § 36-2901 *et seq.*, for the provision of hospitalization and medical care coverage to members.
6. "AHCCCSA" means the "The Arizona Health Care Cost Containment System Administration" which is the Arizona state government agency that administers the AHCCCS program.
7. *"Arizona Works" means the program to provide temporary assistance for needy families within the geographic areas of this state in which a private vendor has entered into a contract with the State pursuant to A.R.S. Title 46, Chapter 2, Article 9,* A.R.S. § 46-341(2).
8. *"Arizona Works group,"* which is sometimes referred to as "the group," *means a group consisting of a person who is a custodial parent, all dependent children with respect to whom the person is a custodial parent and any spouse of the person who resides in the same household as the person and any dependent children with respect to whom the spouse is a custodial parent.* A.R.S. § 46-341(3).
9. "Benefit" means a cash grant provided to an Arizona Works group that is in compliance with program requirements.
10. "Bona fide funeral agreement" means a prepaid plan that specifically covers only funeral related expenses as evidenced by a written contract.
11. "Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.
12. *"Child only case" means an eligible child who is either:*
    a. *In foster care as determined pursuant to title 8, chapter 5, article 1 or who is living with a non-parent relative or adult who has obtained guardianship pursuant to title 14, chapter 5, article 2.*

b. Resides with a parent who meets the Arizona Works financial assistance criteria, but does not meet the non-financial criteria [as defined by A.R.S. § 46-346] for reasons other than non-cooperation with providing requested information to the Agency. A.R.S. § 46-341(4).

13. "Community referral" means unsubsidized, unpaid mentoring and work activities that are arranged through community and faith-based service providers, and are designed to improve a participant's employability and help the participant obtain unsubsidized employment by providing work experience.
14. *"Custodial parent" means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child.* A.R.S. § 46-341(5).
15. "DCSE" means the Department's "Division of Child Support Enforcement," which is the state administrative unit responsible for Arizona's Title IV-D child support program, and includes contracted county attorneys and contracted private companies.
16. "Department" means the Arizona Department of Economic Security.
17. "Dependent child" means a person under 18 years of age who resides with a parent.
18. *"Diversion option" means granting* [a one time payment of] *cash assistance to certain applicants who are eligible for Arizona Works but who have only short-term cash assistance needs, and for whom the diversion option is the most appropriate means to self-sufficiency.* A.R.S. § 46-341(7).
19. "Domestic violence" means an individual has been battered or subjected to extreme cruelty by a spouse or intimate partner, including the following actions:
    a. Physical acts that resulted in, or threatened to result in, physical injury to the individual;
    b. Sexual abuse;
    c. Sexual activity involving a dependent child;
    d. Being forced to engage in nonconsensual sexual acts or activities;
    e. Threats of, or attempts at, physical or sexual abuse;
    f. Mental abuse; or
    g. Neglect or deprivation of medical care.
20. "Earned income" means cash or in-kind income received as compensation for wages, salaries, commissions, or profit through employment or self-employment, less the earned income disregards for initial applicants allowed under R6-15-506.
21. "Education directly related to employment" means adult basic education (remedial reading and math) and English for Speakers of Other Languages (ESOL), for adults who have not attained a high school diploma or GED.
22. "Eligibility determination date" means the date the Agency makes the decision described in R6-15-702 and issues an eligibility decision notice.
23. "Employment level" means 1 of the 4 tiers in the Program. Each tier contains structured work activities at progressive levels and is designed to meet the federal work requirements, improve a participant's employability, and assist the participant in obtaining employment as described in R6-15-602.
24. "Employment plan" means the agreement between the participant and the Agency describing the steps and services needed to transition a participant to self-sufficiency.
25. "Employment search," which is sometimes referred to as "job search," means a structured activity in which a participant actively seeks employment by identifying employment opportunities, applying for employment, and participating in employment interviews.
26. "Encumbrance" means a legal debt.
27. "Equity value" means fair market value minus encumbrances.
28. "Fair consideration" means an amount which reasonably represents the fair market value of transferred property.
29. "Fair market value" means the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.
30. "Foster care maintenance payment" means a monetary amount which the Department pays to a foster parent for the expenses of a child in foster care.
31. "Foster child" means a child placed in a foster home or a child welfare agency.
32. "Full-time employment" means employment that is 40 hours per week, or a lesser amount if less is regarded as full-time for a specific industry.
33. "GED" means a general equivalency degree which is a certificate awarded upon completion of a series of 5 tests that demonstrate high school skills equivalency.
34. "Good cause" means reasons deemed acceptable by the Agency, in accordance with federal and state law, which prevent a participant from participating in work activities, complying with Agency requirements, or accepting employment.
35. "Homebound" means a person who is confined to the home because of physical or mental disability.
36. "Income" means earned and unearned income, combined.
37. *"Individual Responsibility Plan" means an agreement between the Agency and the participant regarding the participant's work activities and services provided by the Agency.* A.R.S. § 46-341(8).
38. *"Job counselor" means a caseworker employed by the Agency to provide financial or employment counseling services to a participant.* A.R.S. § 46-341(9).
39. "Job readiness activities" means activities to help a person prepare for employment, including employment-related education and training, life skills, employment, and job retention skills.
40. "Job skills training" means training opportunities which enable a participant to become proficient in an occupation or skill necessary to meet the participant's employment goal.
41. "Licensed physician" means a:
    a. Medical doctor,
    b. Doctor of osteopathy,
    c. Doctor of naturopathic medicine,
    d. Chiropractor,
    e. Psychiatrist, or
    f. Board certified psychologist.
42. "Liquid asset" means cash or another financial instrument that is readily convertible to cash.
43. "Lump sum income" means a single payment of earned or unearned income, such as retroactive monthly benefits, non-recurring pay adjustments or bonuses, inherit-

ances, lottery winnings, or personal injury and workers' compensation awards.

44. "Member" means a person who is included in an Arizona Works group.
45. *"Minimum wage" means the federal minimum hourly wage under 29 U.S.C. § 206(a)(1).* A.R.S. § 46-341(10).
46. "Minor parent" means a custodial parent who is under age 18.
47. "Non-citizen" means a person who is not a United States citizen.
48. "Non-citizen sponsor" which is sometimes referred to as "sponsor," means a person who, or an organization which, has executed an affidavit of support or similar agreement on behalf of a non-citizen who is not the child or spouse of the sponsor, as a condition of the non-citizen's entry into the United States.
49. "Notice date" means the date that appears as the official date of issuance on a document or an official written notice the Agency sends or gives to an applicant or recipient.
50. "OSI" means the "Office of Special Investigations" which is the Department's office to which the Agency will refer cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies, and other similar functions.
51. "Overpayment" means a cash grant payment received by or for an Arizona Works group in excess of the amount to which the group was lawfully entitled.
52. "Parent" means the lawful mother or father of a dependent child and includes only a birth or adoptive parent.
53. "Participant" means an individual who participates in the Arizona Works Program.
54. "Participating in a strike" means engaging in any activity as defined at 29 U.S.C. § 142(2), as amended through June 23, 1947, which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
55. "Putative father" means a male person whom a birth mother has named as father of her child, but whose paternity has not been established as a matter of law.
56. "Qualified quarter of coverage" has the same meaning as prescribed in 8 U.S.C. § 1645 (August 22, 1996) which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
57. "Recipient" means a person who is a member of an Arizona Works group or a person who is only receiving child care assistance from the Agency.
58. "Request for hearing" means a clear written expression by an applicant or recipient, or that person's representative, indicating a desire to present the person's case or issue to a higher authority.
59. "Resident" means a person who meets the definition of A.R.S. § 46-292(A)(1).
60. "Resources" means the group's real and personal property.
61. "Review" means a review of all factors affecting a group's eligibility and assistance amount.
62. "Sanction" means a reduction or termination of an Arizona Works group's employment level grant for failure to participate or comply with Agency requirements without good cause.
63. "Satisfactory attendance in high school or GED activities" means that a participant who has not completed high school or received a GED is attending high school or GED activities and meeting attendance requirements established by the school or GED program.
64. "Satisfactory participation in education directly related to employment" means that a participant is meeting, on a periodically measured basis, a consistent standard of progress based upon standards established by the educational institution or program the participant is attending.
65. "Self-sufficiency" means a condition where a person relies on his or her own income and resources for support of self and family, and does not need to rely on cash grant payments under Arizona Works.
66. "Sponsored non-citizen" means a non-citizen whose entry into the United States was sponsored by a person who, or an organization which, executed an affidavit of support or similar agreement on behalf of the non-citizen, who is not a child or spouse of the sponsor.
67. "Student" means a person who is:
    a. Attending a school, college, or university;
    b. Enrolled in a course of vocational or technical training designed to prepare the trainee for gainful employment; or
    c. A participant in Job Corps.
68. "Subsidized paid employment," which is sometimes referred to as "subsidized employment" or the "Subsidized Employment Program," means employment in a public or private sector organization that receives an Agency subsidy to offset the cost of wages (and possibly other employer-paid benefits) of an employee.
69. "Suitable work" means work in an occupation that a person can successfully perform.
70. "Support" means child support, alimony, spousal maintenance, or medical support.
71. "SVES" means the "State Verification and Exchange System" which is a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, and state wage and unemployment insurance benefit data files.
72. "Teen custodial parent," for the purpose of work requirements, means a parent, under age 20, who is caring for that person's own child.
73. *"Temporary Assistance for Needy Families" means assistance granted under Section 403 of Title IV of the Social Security Act as it exists after August 21, 1996.* A.R.S. § 46-341(11)
74. "Trial job" means an unsubsidized, unpaid position the Agency has solicited from the community to improve the employability of a participant by providing work experience and training to assist the participant to obtain unsubsidized employment.
75. "Unaffordable child care" means that child care is not affordable to a family because the cost of care is more than what the Agency will pay and would require additional payment by the participant.

76. "Unavailable child care" means no child care provider:
    a. Is located within 1½ hours, 1 way, from a recipient's home to work by way of the provider, after exploring all modes of transportation, including walking;
    b. Has available slots or vacancies; or
    c. Can provide services to a disabled or handicapped child with special needs.
78. "Unearned income" means income received from sources other than employment, self-employment, or in-kind income.
79. "Unsubsidized employment" means all paid employment in the public or private sector except subsidized paid employment.
80. "Unsuitable child care" means that child care is available through a relative provider, but the recipient declares in writing that the relative provider is inappropriate because the provider:
    a. Has a history of committing or allowing child neglect or abuse;
    b. Is experiencing domestic violence;
    c. Has a history of serious crime;
    d. Is a drug abuser;
    e. Has an emotional, mental, or physical condition that prevents the relative from providing safe care; or
    f. Resides in a home which is unsafe for children.
80. "Unwed minor parent" means a parent under age 18 who is not married.
81. "Vendor payment" means a money payment made on behalf of a participant directly to a provider of goods or services.
82. *"Work activities" means activities that are countable toward the Federal work participation rate as prescribed in P.L. 104-193, Section 407 (1996):*
    a. Unsubsidized employment.
    b. Subsidized private or public employment.
    c. Work experience.
    d. On-the-job training.
    e. Job search and job readiness assistance.
    f. Community service programs.
    g. Vocational educational training.
    h. Job skills training directly related to employment.
    i. Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency.
    j. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.

    A.R.S. § 46-101(23).
83. "Work day" means Monday through Friday, excluding Arizona state holidays.
84. "Work experience" means unpaid work in the public or private sector through which a participant establishes a good work record, develops good work habits and skills, and encounters opportunities to transition into unsubsidized paid employment.
85. "Work requirement" means the minimum number of hours required for all families and 2-parent families to participate in work activities as a condition of eligibility for Arizona Works, as prescribed in Public Law 104-193, Section 407 (1996), not including any later amendments or editions, which is incorporated by reference in this rule. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 W. Jefferson, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 W. Washington, Phoenix, Arizona.

R6-15-102. Chapter Scope and Application

A. The rules in this Chapter apply to persons who apply for and are determined eligible for Arizona Works in the geographic area described in R6-15-103.
B. The rules in this Chapter do not apply to an Arizona Works group who moves outside the geographic area listed in R6-15-103.

R6-15-103. Geographic Scope of Arizona Works

A. The Arizona Works pilot project operates in the following cities and zip codes:
    1. Mesa - 85201, 85202, 85203, 85204, 85205, 85206, 85207,85208, 85210, 85211, 85212, 85213, 85215 and 85240.
    2. Phoenix - 85022, 85023, 85024, 85027, 85028, 85029, 85032, 85044,85045, 85048 and 85254.
    3. Scottsdale - 85250, 85251, 85252, 85255, 85256, 85257, 85258, 85259,85260, 85268 and 85271.
    4. Chandler - 85224, 85225, 85226, 85227, 85244, 85248,and 85249.
    5. Tempe - 85281, 85282, 85283, 85284 and 85287.
    6. Gilbert - 85233, 85234, 85296 and 85299.
    7. Glendale - 85304 and 85306.
    8. Carefree - 85377.
    9. Cave Creek - 85331.
    10. Fountain Hills - 85269.
    11. Higley - 85236.
    12. Paradise Valley - 85253.
    13. Queen Creek - 85242.
    14. Fort McDowell Indian Reservation - 85264.
    15. Any new and successor zip code areas created to cover the same geographical areas covered by the zip codes listed above.
B. The Arizona Works pilot project shall not include any municipality having more than 35% of the residents who qualify for another federal Temporary Assistance for Needy Families program based on the residents' status as members of an Indian tribe. All residents of the municipality shall remain under the EMPOWER Redesign program.

R6-15-104. Eligibility for Pilot; Relocation Outside Pilot Area

To be eligible for Arizona Works assistance, an individual shall live in a zip code area listed in R6-15-103 and meet the eligibility requirements prescribed in this Chapter.

R6-15-105. AHCCCS Program

If the Health Care Financing Administration of the U.S. Department of Health and Human Services approves the Arizona Works waiver request, the Agency shall determine eligibility for the AHCCCS program in accordance with the laws, rules, policies, and practices prescribed and promulgated in accordance with A.R.S. Title 36, Chapter 29.

R6-15-106. Food Stamp Program

If the U.S. Department of Agriculture approves the Arizona Works waiver request, the Agency shall determine eligibility for the Food Stamp program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with

7 U.S.C. §§ 2011-2029 and Title 8 of Public Law 104-193 as it applies to Arizona.

R6-15-107. Child Care Assistance Program
The Agency shall determine eligibility for the Child Care Assistance program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with Laws 1997, Chapter 300 (SB 1357) as amended by Laws 1998, Chapter 211 (SB 1082) and 6 A.A.C. 5, Articles 49 and 51.

R6-15-108. General Assistance Program
The Agency shall determine eligibility for the State General Assistance program in accordance with the laws, rules, policies and practices prescribed and promulgated in accordance with A.R.S. Title 6, Chapter 13 and R6-13-701.

R6-15-109. EMPOWER Redesign Program
A. Notwithstanding the rules, policies and practices prescribed and promulgated in accordance with A.R.S. §§ 46-342, 46-346, 46-348, and this Chapter, an individual who is qualified for benefits in the Department's EMPOWER Redesign program, including income disregards, is automatically qualified for the Arizona Works pilot program.
B. Adults or adult relatives, who apply on behalf of a child or children for a child only case in Arizona Works, shall have eligibility for the child only case determined under the same eligibility provisions as the Department's EMPOWER Redesign program.

R6-15-110. Nondiscrimination
The Arizona Works Agency shall administer the Arizona Works program in accordance with the nondiscrimination provisions of R6-1-501.

R6-15-111. Confidentiality
A. Personally identifiable information.
1. All personally identifiable information concerning an applicant or recipient in the possession of the Agency is confidential, and not subject to public inspection, except as otherwise specified in A.R.S. § 41-1959 and this Section.
2. Personally identifiable information includes:
a. Name, address, and telephone number;
b. Social security number and date of birth;
c. Unique identifying numbers such as a driver's license number;
d. Photographs;
e. Information related to social and economic conditions or circumstances;
f. Medical data, including diagnosis and past history of disease or disability; and
g. Any other information that is reasonably likely to permit another person to readily identify the subject of the information.
B. Release of information to applicants and recipients.
1. An applicant or recipient may review the contents of his or her own eligibility file at any time during the Agency's regular business hours. An Agency employee may be present during the review.
2. A child may review a case file in which the child is included as a recipient, only with the written permission of the child's parent, or legal guardian or custodian.
3. The Agency may withhold medical information which, if released, may cause physical or mental harm to the person requesting the information, until the Agency contacts the person's physician and obtains an opinion that the Agency can safely release the information.
C. Release of information to authorized persons and representatives. An applicant or recipient may permit the release of information from the applicant or recipient's eligibility file to another person or representative by executing a release form containing the following information:
1. The specific information the Agency is authorized to release;
2. The name of the person to whom the Agency may release information;
3. The duration of the release, if limited; and
4. The applicant or recipient's signature and date.
D. Release to persons and agencies for official purposes.
1. An official purpose is a purpose directly related to the administration of a public assistance program and includes:
a. Establishing eligibility;
b. Determining the amount of an assistance grant;
c. Providing services to applicants and recipients, including child support enforcement services provided by Arizona or other states;
d. Investigating or prosecuting civil or criminal proceedings related to an assistance program; and
e. Evaluating, analyzing, overseeing, and auditing program operations.
2. The Agency may release confidential information to the following persons and agencies to the extent required for official purposes:
a. Agency and Department employees;
b. Employees of the Social Security Administration;
c. Public assistance agencies of any other state;
d. Persons who administer or perform child support enforcement activities;
e. Arizona Attorney General's Office;
f. United States, Arizona, or other appropriate court systems;
g. Persons connected with the administration of federal or federally assisted programs that provide assistance, in cash or in-kind, or services directly to individuals on the basis of need;
h. Government auditors when the audits are conducted in connection with the administration of any assistance program by a governmental entity that is authorized by law to conduct an audit;
i. AHCCCSA, for eligibility purposes;
j. Law enforcement officials for an investigation, prosecution, or civil or criminal proceedings conducted by or on behalf of the Department or a federal public assistance agency in connection with the administration of a public assistance program; and
k. The Internal Revenue Service for the purpose of identifying improperly claimed tax exemptions by the absent parent of a child supported by an Arizona Works cash grant.

ARTICLE 2. Application Process

R6-15-201. Application
A. A person may apply for Arizona Works either in person or by mail by submitting, to the Agency, an application with the following information:
1. The legible name and address of the person requesting assistance; and
2. The signature, under penalty of perjury, of:
a. The applicant or the applicant's authorized representative; or

b. If the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.

B. A person shall apply to the Agency office for the person's zip code area.

C. In addition to the information described in subsection (A), a completed application shall contain:

1. The names of all people living with the applicant and their relationship to the applicant; and
2. All other financial and non-financial eligibility information requested on the application form and described in this Chapter, including a notarized affidavit of paternity.

R6-15-202. Initial Interview

A. Upon receipt of an application with the information listed in R6-15-201(A), the Agency shall schedule an initial work assessment for the applicant. Upon request, the Agency shall conduct the interview at the residence of a person who is homebound.

B. The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.

C. During the interview, an Agency representative shall:

1. Help the applicant complete the application form;
2. Witness the signature of the applicant or the applicant's authorized representative;
3. Discuss how the applicant and the other group members previously met their needs, and why they now need assistance;
4. Explain that the purpose of Arizona Works is to provide a temporary work assignment to prepare an individual for unsubsidized work;
5. Provide the applicant with written information explaining:
   a. The terms, conditions, and obligations of the Arizona Works program;
   b. Any additional verification information as prescribed in R6-15-203(A) which the applicant needs to provide for the Agency to conclude the eligibility evaluation;
   c. The Agency's practice of exchanging eligibility and income information through the State's Verification and Exchange System (SVES);
   d. The coverage and scope of the Arizona Works program, and related services which may be available to the applicant;
   e. The applicant's rights, including the right to appeal adverse action;
   f. The AHCCCS enrollment process;
   g. The requirement to report all changes within 10 calendar days from the date the change becomes known; and
   h. The family planning services available through AHCCCS health plans;
6. Review the penalties for perjury and fraud;
7. Review any verification information already provided;
8. Explain the applicant's duties to:
   a. Cooperate with DCSE to establish paternity, and a current support order, and to enforce support obligations, unless the applicant can show good cause for not doing so;
   b. To send DCSE any support payments the applicant receives after the date the applicant is approved to receive Arizona Works assistance;
   c. Participate in the work requirements; and
   d. Complete the paternity affidavit;
9. Help the applicant complete the paternity affidavit;
10. Photograph the applicant for identification purposes;
11. Inform the applicant of the requirements to cooperate in the Arizona Fingerprint Imaging Program as prescribed in A.R.S. §§ 46-217 and 46-218.
12. Review all ongoing reporting requirements, and the potential penalties for failure to make timely reports; and
13. Inform the applicant of the opportunity to set aside funds in an individual development account as prescribed in R6-15-403 for educational or training purposes.
14. Explain and review the diversion option for cash assistance for eligible applicants as prescribed in A.R.S. § 46-353.

R6-15-203. Verification of Information

A. The Agency shall obtain independent verification or corroboration of information provided by the applicant or recipient when required by law, or when necessary to determine eligibility.

B. The Agency may verify or corroborate information by any reasonable means including:

1. Contacting third parties such as employers;
2. Making home visits as provided in R6-15-204;
3. Asking the applicant or recipient to provide written documentation such as billing statements or pay stubs; and
4. Conducting a computer data match through SVES.

C. The applicant or recipient has the primary responsibility to provide all required verification and to explain why receipt of information may be delayed for a reason listed in subsection (D)(1). The Agency shall offer to help an applicant or recipient who has difficulty obtaining verification and requests help.

D. An applicant or recipient shall provide the Arizona Works Agency with all requested verification within 7 work days from the notice date of a written request for information.

1. The Agency may extend the 7 day period when:
   a. The requested information is coming from a source that is out of state and not readily available;
   b. The requested information is available only from a source that requires a fee for the information, and payment of the fee would cause financial hardship to the applicant;
   c. The source of information is a third person, such as a landlord or employer, who is unavailable; or
   d. The individual has tried to obtain the information, but has been unsuccessful for reasons beyond the individual's control.
2. When an applicant does not timely comply with a request for information, the Agency shall deny the application as provided in R6-15-206(C).

E. The application form shall contain a notice to advise the applicant that the Agency may contact third parties for information. The applicant's signature on an application is deemed consent to the contact.

R6-15-204. Home Visits

A. The Agency shall schedule a home visit:

1. When a job counselor reasonably believes that a home visit will avoid an eligibility determination error; or
2. To conduct an initial interview or an eligibility review when a homebound applicant or recipient so requests.

B. The Agency shall mail the applicant or recipient written notice of a scheduled home visit at least 7 days before the date of the visit.

C. The Agency may deny or terminate assistance if the applicant or recipient misses a scheduled home visit for:
   1. An initial interview and does not timely reschedule the visit; or
   2. A 6 month review interview and does not timely reschedule the visit.

D. The Agency may conduct unscheduled visits to gather information or to verify information previously provided by an applicant or recipient. The Agency shall not deny an application or terminate assistance if the applicant or recipient is not home for an unscheduled visit.

R6-15-205. Withdrawal of Application; Case Closure

A. An applicant may withdraw an application at any time prior to its disposition by giving the Agency a written request for withdrawal, signed by the applicant.

B. If an applicant makes an oral request to withdraw an application, the Agency shall:
   1. Accept the oral request.
   2. Provide the applicant with a written withdrawal form.
   3. Request that the applicant complete the form and return it to the Agency, and
   4. Tell the applicant what will happen if the applicant does not return the withdrawal form within 7 work days.

C. If the applicant fails to return the completed withdrawal form, the Agency shall deny the application for failure to provide information unless the applicant rescinds the oral withdrawal request within 7 days of the date the Agency gives the applicant a withdrawal form.

D. A withdrawal is effective as of the application file date unless the applicant specifies a different date on the withdrawal form.

E. The Agency shall not reinstate an application that has been withdrawn. An applicant who withdraws an application shall reapply.

R6-15-206. Processing the Application; Denial, Approval

A. The Agency shall complete the eligibility determination for Arizona Works assistance within 45 days and select the appropriate employment placement level for the participant within 60 days of the application file date.

B. The Agency may terminate the application process and close the file when:
   1. The application is withdrawn;
   2. The application is rendered moot because the applicant has died or cannot be located; or
   3. There is a delay resulting from the Agency request for additional verification information as provided in R6-15-203(D).

C. The Agency shall deny an application when the applicant fails to:
   1. Complete the application and an eligibility interview, as described in R6-15-202;
   2. Submit all required verification information, as prescribed in R6-15-203; or
   3. Cooperate during the application process as required by Article 2 of this Chapter.

D. When an Arizona Works group satisfies all eligibility criteria, the Agency shall approve the application, and send the applicant an approval notice. The approval notice shall include the amount of assistance and an explanation of the assistance unit's appeal rights. The notice may also include assignment to an employment level.

E. The Arizona Works Agency shall process an application for the purpose of determining medical assistance eligibility pursuant to R9-22-101 *et seq.*

R6-15-207. Periodic Review

A. The Agency shall periodically review all eligibility factors for each Arizona Works group and each participant's employment placement level. The review shall occur:
   1. At least once every 6 months from the date of application, and
   2. More often if the job counselor needs to reassess the participant's employment placement.

B. At least 30 days before the 6-month review date, the Agency shall schedule the recipient for a review interview.

C. The Agency shall conduct the review interview in the same manner as an initial interview.

D. The Agency shall verify the Arizona Works group's resources and income and any eligibility factors which have changed or are subject to change. The Agency may verify other factors if the Agency experience suggests the need for additional verification.

R6-15-208. Cooperation in Providing Information

The participant shall cooperate in providing all requested information within the time frames specified by the Agency. When the participant refuses to cooperate in providing requested information, the Agency shall deny the application or close the case, after giving notice.

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

R6-15-301. Citizenship and Alien Status

A. To qualify for Arizona Works, a person shall be a United States citizen or a lawful alien, as prescribed in A.R.S. § 46-346(A)(2).

B. The Agency shall verify legal alien status by obtaining a person's alien registration documentation, or other proof of immigration registration, from the U.S. Immigration and Naturalization Service (INS), or by submitting a person's alien registration number and other related information to the INS.

C. An ineligible alien may serve as payee for the eligible members of the Arizona Works group.

R6-15-302. Sponsored Non-Citizens

A. A sponsored non-citizen is ineligible for Arizona Works until the sponsored non-citizen:
   1. Attains United States citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act; or
   2. Has 40 qualifying quarters of work.

B. A sponsored non-citizen who seeks benefits shall obtain the cooperation of the sponsor as necessary to satisfy the eligibility criteria described in this Chapter.

C. The Agency shall consider the full income and resources of a non-citizen sponsor and the sponsor's spouse as available to the sponsored non-citizen until:
   1. The sponsored non-citizen attains United States citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act; or
   2. The sponsored non-citizen has 40 qualifying quarters of work.

D. Subject to Article 4 concerning treatment of resources, the Agency shall consider the total equity value of resources belonging to the sponsor and the sponsor's spouse as available to the sponsored non-citizen.

E. Subject to Article 5 concerning treatment of income, the Agency shall consider the full income of the sponsor and the sponsor's spouse available to the sponsored non-citizen.

F. When a person sponsors 2 or more non-citizens, the Agency shall not prorate the sponsor's income and resources, but

shall count the sponsor's full income and resources as available to all sponsored non-citizens.

G. The sponsored non-citizen and the sponsor are jointly liable for any overpayment resulting from the sponsor's provision of incorrect or incomplete information, unless the sponsor had good cause, so as to make the non-citizen solely liable. Good cause includes:
   1. The Agency failed to inform the non-citizen or the sponsor that the information was necessary; or
   2. Extenuating personal circumstances prevented the sponsor from providing necessary information.

R6-15-303. Residency

A. To qualify for the Arizona Works program, a person shall be an Arizona resident.

B. An Arizona resident is a person who:
   1. Voluntarily resides and intends to make a permanent home in Arizona,
   2. Lives in Arizona at the time of making application and while receiving an Arizona Works cash grant, and
   3. Is not receiving public assistance from another state.

C. A person terminates Arizona residency by:
   1. Leaving Arizona for more than 30 consecutive days,
   2. Leaving Arizona with the intent to live elsewhere, or
   3. Accepting public assistance from another state.

D. The dependent child of a caretaker relative who is an Arizona resident is deemed an Arizona resident.

E. The Agency shall verify Arizona residency.

R6-15-304. Application for Other Potential Benefits

The members of the Arizona Works group shall cooperate in applying for other public assistance programs or resources that the Agency believes may be available to the members.

R6-15-305. Temporary Absence of a Dependent Child

A. A dependent child who is temporarily not living with the child's custodial parent is eligible for Arizona Works when:
   1. At the initial application, the dependent child will return within 30 days from the date the Agency places the applicant in a work level;
   2. At the 6 month review appointment for an active case, the dependent child will return within 180 days from the date the custodial parent first notified the Agency of the temporary absence;
   3. The custodial parent continues to exercise responsibility for the care and control of the child; and
   4. The child is not absent because:
      a. The child was removed by the state child protection agency; or
      b. The child is in a penal institution that is meeting all of the child's basic needs.

B. The child's custodial parent is ineligible for Arizona Works, if a dependent child will be or is absent from home for longer than a period specified in subsection (A).

R6-15-306. Pregnant Women

A. Upon compliance with all other eligibility criteria and procedures, a pregnant woman with no other dependent children may be eligible for the Arizona Works program, as though the child was already born.

B. Following birth of the child, the mother shall inform the Agency of the child's birth and provide all necessary information regarding the birth within 10 days after the birth of the child to maintain eligibility for the Arizona Works Program.

C. Eligibility shall begin no earlier than 3 months before the predicted month of delivery.

D. If the child is miscarried, stillborn, or born prematurely, and the woman reports such event to the Agency within 10 calendar days of the occurrence,
   1. The occurrence shall not affect the woman's original eligibility, and
   2. No overpayment shall result.

E. The pregnant woman shall cooperate with the work requirements based on her employment placement level, but may be excused from the work requirements as provided in A.R.S. § 46-350(B).

R6-15-307. Unwed Minor Parents

A. A minor parent means a person who:
   1. Is under age 18,
   2. Has never married, and
   3. Is either the natural parent of a dependent child living in the same household, or is pregnant and eligible for assistance under R6-15-306.

B. An Arizona Works group headed by a minor parent is not eligible for an Arizona Works cash grant, except as provided in subsection (C) below.

C. A minor parent may receive a cash grant when the minor parent satisfies one of the tests listed in this subsection:
   1. The minor parent has no living or locatable:
      a. Parent,
      b. Legal custodian who is related to the minor parent, or
      c. Legal guardian.
   2. The minor parent is legally emancipated.
      a. A minor parent is emancipated if the minor parent's parent or legal guardian has relinquished all control and authority over the minor parent, and no longer provides financial support to the minor parent.
      b. A minor parent is emancipated if the minor parent:
         i. Has lived apart from the parent, adult specified relative, or legal guardian for at least 1 year before applying for Arizona Works;
         ii. Has demonstrated financial independence from the parent, adult specified relative, or legal guardian for at least 1 year before applying for Arizona Works; and
         iii. Has not received Arizona Works assistance, or Cash Assistance from the Department, for each of the 12 consecutive months immediately preceding the month the minor parent applies for Arizona Works.
      c. The minor parent shall provide evidence to establish emancipation. Acceptable verification may include:
         i. Rent receipts or other living arrangement statements which establish independent living apart from the parent, adult specified relative, or legal guardian;
         ii. Income statements or income tax records which establish financial independence from the parent, adult specified relative, or legal guardian; or
         iii. Written statements from a parent, relative, or guardian which establish the independent status of the minor parent.
   3. The physical or emotional health or safety of the minor parent, or the minor parent's child, would be at risk if the minor parent and the minor parent's child resided in the home of the minor parent's parent, legal custodian, or legal guardian.

a. The minor parent shall file a written statement of abuse or neglect with the Arizona Works Agency.
   i. Abuse means any behavior defined at A.R.S. § 8-546(A)(2).
   ii. Neglect means any behavior defined at A.R.S. § 8-546(A)(6).
b. The written statement shall include the following information regarding the allegations of abuse or neglect:
   i. The name of the victim;
   ii. The name of the perpetrator;
   iii. The dates of the alleged abuse or neglect;
   iv. The nature of the alleged abuse or neglect; and
   v. Whether or not other children living in the home are subject to the abuse or neglect.
c. The Agency shall report all allegations of abuse or neglect to Child Protective Services.
d. Unless evidence to the contrary exists, the Agency shall accept the minor parent's written statement of abuse or neglect as sufficient evidence that the health or safety of the minor parent, or minor parent's child, would be at risk, pending the outcome of a Child Protective Services assessment.
e. If Child Protective Services substantiates the allegation of abuse or neglect, the minor parent and the minor parent's child may receive an Arizona Works cash grant if otherwise eligible under this Chapter.
f. If Child Protective Services is unable to confirm or refute the allegation of abuse or neglect, the minor parent shall remain eligible based on the minor parent's written statement.
g. If Child Protective Services determines the allegation of abuse or neglect is unsubstantiated:
   i. The Agency shall inform the minor parent of the determination, and allow the minor parent 60 days to return to the home of the parent, custodian, or legal guardian;
   ii. The Agency shall terminate the cash grant effective the first month following expiration of the 60-day period; and
   iii. The Agency shall not create an overpayment for assistance paid based on the minor parent's written statement of alleged abuse or neglect.

D. A minor parent, and the minor parent's child, who are ineligible for an Arizona Works cash grant solely due to the provisions of this section, may receive the following services, if otherwise eligible:
   1. AHCCCS medical services;
   2. Employment counseling, services, and placement;
   3. Child care assistance; and
   4. Any other program or service for which Arizona Works recipients categorically qualify.

E. The provisions of this section do not apply to a parent who is under age 18 and who is married or has been married.

R6-15-308. Minor Parents; School Attendance

An unwed minor parent who is under age 20 and has not attained a high school diploma, or its equivalent, shall not be eligible for the Arizona Works Program unless he or she maintains:
   1. Satisfactory attendance at a secondary school, or its equivalent; or
   2. Satisfactory participation in education directly related to employment.

R6-15-309. Assignment of Child Support Rights

A. To qualify for the Arizona Works program, an applicant shall assign to the state, all rights to any support obligation that may be held by any member of the Arizona Works group, including any unpaid support obligation or support debt which has accrued at the time of the assignment, and accrues while receiving assistance.

B. A refusal to assign support rights to the state is a refusal to complete the application, and shall result in denial of the Arizona Works application.

C. After being approved for the Arizona Works program, the recipient shall submit to the state all monetary support the recipient receives directly.

D. When the Agency receives any monetary support that a recipient received directly from the obligor, the Agency shall accept the monetary support and forward the amount to the state.

R6-15-310. Cooperation with Child Support Enforcement

A. At the time of the initial interview and at all review interviews, the Agency shall explain:
   1. The applicant's duty of cooperation with the Agency and DCSE;
   2. Good cause for non-cooperation and how to establish it;
   3. The duty to send the state any support the Arizona Works group members receive; and
   4. The consequences for breach of the duties set forth in this section.

B. An applicant or recipient shall cooperate with the Agency and DCSE to obtain support owed to the applicant or recipient, unless there is good cause for non-cooperation, as described in A.R.S. § 46-347 and R6-15-311.

C. Cooperation shall include:
   1. Identifying and locating the parent of a child, for whom aid is claimed;
   2. Establishing the paternity of a child born out-of-wedlock, for whom aid is claimed;
   3. Obtaining support payments, or other payments or property due the applicant or recipient for the benefit of the child; and
   4. The following actions, when relevant or necessary:
      a. Appearing at a child support enforcement office to provide oral or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;
      b. Submitting and having the child submit to genetic testing;
      c. Signing authorizations for third parties to release information concerning the applicant or the child, or both;
      d. In cases in which parentage has not been established, providing a sworn statement alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties;
      e. Appearing as a witness at a judicial or administrative hearing or proceeding;
      f. Providing additional information, or attesting to the lack of information, under penalty of perjury; and
      g. Paying to the state any support payments received from the absent parent after signing the assignment of rights pursuant to R6-15-309(A).

D. If the applicant or recipient fails to cooperate as required by subsection (B) without good cause the Agency shall sanction the Arizona Works group as specified in A.R.S. § 46-300.

1. In A.R.S. § 46-300, an "instance of noncompliance" means when a recipient does not cooperate as required by subsection (B) for the Arizona Works pilot project.
2. When a recipient's noncompliance continues into the subsequent month, that month will be considered the next instance of noncompliance and result in the next level of graduated sanction.

R6-15-311. Good Cause for Non-Cooperation

A. An applicant or recipient may establish good cause for non-cooperation with the Agency as provided in A.R.S. § 46-347(B).
B. A person shall provide evidence to verify good cause within 20 days of filing a claim of good cause as prescribed in A.R.S. § 46-347(C).
C. The applicant or recipient shall immediately notify DCSE if a court issues a protective order involving the non-custodial parent or putative father.

R6-15-312. Compliance with Work Requirements

A. As a condition of eligibility, an Arizona Works participant shall comply with the work requirements of the Arizona Works program.
B. If a person fails or refuses to comply with the work requirements without good cause as prescribed in R6-15-611, the Agency shall sanction the Arizona Works group as described in Article 8 of this Chapter.

R6-15-313. Strikers

The Agency shall determine eligibility for Arizona Works cash benefits during a strike period using the striker's pre-strike monthly income.

ARTICLE 4. FINANCIAL ELIGIBILITY; RESOURCES

R6-15-401. Treatment of Resources

A. In determining eligibility, the Arizona Works Agency shall include all resources available to the Arizona Works group, unless excluded by applicable law.
B. An Arizona Works group is ineligible for assistance for any month in which the group's resources exceed $2,000, after application of all available exclusions.

R6-15-402. Treatment of Resources by Ownership Status

A. The Agency shall consider the resources belonging to the persons listed in this subsection, available to the Arizona Works group.
   1. An Arizona Works group member; and
   2. The sponsor of an alien, as provided in Article 3.
B. The Agency shall consider the resources of the persons listed in this section unavailable to the Arizona Works group.
   1. A non-parent relative or adult, who is living in the home, who is not included in the Arizona Works group;
   2. An SSI recipient, as to resources held as sole and separate property, or counted in the determination of SSI eligibility; and
   3. A dependent child who is not included in the assistance unit due to receipt of adoption assistance or foster care payments under Title IV-E of the Social Security Act.
C. The Agency shall consider ownership in determining whether a resource is available to the Arizona Works group.
   1. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names, are deemed available when all owners can be located and consent to disposal of the resource, except that consent is not required if all owners are members of the Arizona Works group.
   2. Jointly owned resources, with ownership records containing the word "or" between the owners' names, are deemed available in full to each owner. When more than 1 owner is a member of an Arizona Works group, the Agency shall count the equity value of the resource only once.
D. The Agency shall consider the following resources unavailable to the Arizona Works group:
   1. Property subject to a spendthrift restriction. Such property may include:
      a. Irrevocable trust funds;
      b. Accounts established by the Social Security Administration, Veteran's Administration, or some other entity, which mandate that the funds in the account be used for the benefit of a person not residing with the Arizona Works group.
   2. Resources being disputed in divorce proceedings or in probate matters.
   3. Real property situated on a Native American reservation.

R6-15-403. Excluded Resources

The Agency shall exclude the equity value of the resources listed below, as provided in this Section.
1. The usual residence that serves as the homestead of the Arizona Works group members.
2. One burial plot for each member of the Arizona Works group.
3. Household furnishings used by the Arizona Works group members in their usual place of residence and personal effects, essential to day-to-day living.
4. Up to $1500 of the value of 1 bona fide funeral agreement, for each member of the Arizona Works group.
5. The equity value of all vehicles owned by the Arizona Works group, up to a total of $4,500.
6. Individual development accounts which are designed to set aside funds for educational or training purposes.
7. Any other resource specifically excluded by law.

R6-15-404. Resource Transfer; Limits

A. An applicant or recipient shall not transfer a resource with the intent to qualify or attempt to qualify for the Arizona Works program within 1 year prior to application or while receiving assistance, unless fair consideration was received.
B. Except as otherwise provided in this section, when an applicant or recipient does not receive fair consideration for a transferred resource ("an improper transfer"), the Arizona Works group is ineligible for assistance.
   1. The period of ineligibility begins in the month in which the transaction occurred.
   2. The Agency shall compute the duration of ineligibility by subtracting the consideration actually received, from the equity value of the transferred resource, and dividing that sum by 36% of the 1992 Federal Poverty Level for the Arizona Works group. The resulting number is the number of months the group is ineligible.
C. The group is not ineligible because of an improper transfer if the equity value of the transferred resource, plus the value of the group's other available resources, does not exceed the resource limitation.
D. An improper transfer of homestead property shall not affect eligibility if the property was transferred because a member was unable to continue living in the home for health reasons, as determined by a licensed physician.
E. If an applicant or recipient disposes of homestead property, the Agency shall count, as a resource, all proceeds of the sale

not reinvested in homestead property, when the applicant or recipient:

1. Invests the proceeds in a resource other than homestead property,
2. Advises the Agency that the group will not reinvest the proceeds in other homestead property, or
3. Fails to purchase new homestead property within 90 days of the date of sale.

ARTICLE 5. FINANCIAL ELIGIBILITY: INCOME

R6-15-501. Treatment of Income; Income Limits

A. The Agency shall treat all income of the Arizona Works group in accordance with the provisions of this Article.

B. As used in this Section, the term "income" shall include the following, when actually received by the Arizona Works group:
   1. Gross earned income from public or private employment, including in-kind income, before any deductions;
   2. For self-employed persons, the sum of gross business receipts minus business expenses; and
   3. Unearned income, such as monetary benefits or assistance grants, minus any deductions to repay prior overpayments or attorneys' fees.

C. To qualify for Arizona Works, the Arizona Works group's gross income, minus the group's allowable earned income disregards under R6-15-506, shall be at or below 36% of the 1992 Federal Poverty Level.

R6-15-502. Income Exclusions

When determining income for an Arizona Works group, the Agency shall not count the following types of income:

1. Loans;
2. Educational grants or scholarships;
3. Income tax refunds, including any earned income tax credit;
4. Non-recurring cash gifts which do not exceed $30 per person in any calendar quarter;
5. Cash contributions from other agencies or organizations which are not meant to cover expenses for the following items:
   a. Food;
   b. Shelter, including only rent or mortgage payments;
   c. Utilities;
   d. Household supplies, including bedding, towels, laundry, cleaning, and paper supplies;
   e. Public transportation fares for personal use;
   f. Basic clothing or diapers; or
   g. Personal care and hygiene items, such as soap, toothpaste, shaving cream, and deodorant;
6. The face value of food stamp coupons;
7. The value of governmental rent and housing subsidies;
8. The value of energy assistance which is provided:
   a. Either in cash or in-kind by a government agency or municipal utility, or
   b. In-kind by a private, non-profit organization;
9. Vendor payments;
10. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments which are not intended as wages;
11. Earnings from high school, on-the-job training programs;
12. Reimbursements for Arizona Works Program training related expenses;
13. Agent Orange payments;
14. Burial benefits which are dispersed solely for burial expenses;
15. Disaster assistance provided by the Federal Disaster Relief Act, or comparable assistance provided by state or local governments, or disaster assistance organizations;
16. Foster care payments;
17. Radiation exposure compensation payments;
18. Income received from the Volunteers In Service To America (VISTA) program which does not exceed the state or federal minimum wage;
19. Benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
20. Reimbursements for work-related expenses, which do not exceed the actual expense amount;
21. Earned income of dependent children who are students enrolled and attending school at least half-time as defined by the institution;
22. Income received from Americorp Network Program;
23. Any other income specifically excluded by applicable state or federal law; and
24. The amount of subsidized wages from Level 2 employment.

R6-15-503. Special Income Provisions; Child Support, Alimony or Spousal Maintenance

A. The Agency shall count support payments received by a member of the Arizona Works group before the eligibility determination date as income in the month received.

B. After the eligibility determination date, and if the application is approved, the Agency shall count current support payments that are received and retained by DCSE, on behalf of an Arizona Works group member, as unearned income in the month received for the purpose of determining continued eligibility. The Agency shall attribute the income to the Arizona Works group, and add it to the group's other income, to determine if the group meets the financial eligibility criteria.

C. After the eligibility approval date, if DCSE notifies the Agency that an Arizona Works group member fails to turn over the support assigned to the Department, the Agency shall:
   1. Count the support received directly by an Arizona Works group member, as provided in subsection (A); and
   2. Sanction the grant as provided in R6-15-802.

R6-15-504. Special Income Provisions; Non-Recurring Lump Sum Income

When an Arizona Works group receives a non-recurring lump sum payment, the Agency shall treat the lump sum payment as a resource, in accordance with Article 4.

R6-15-505. Calculating Monthly Income

A. The Agency shall calculate monthly income for an Arizona Works group using the methods described in this section.

B. The projected income shall include income which the Arizona Works group has received and reasonably expects to receive in an assistance month, and shall be based on the Agency's reasonable expectation and knowledge of the Arizona Works group's current, past, and future circumstances.

C. The Agency shall include in its calculation all gross income from every source available to the Arizona Works group unless the income is specifically excluded in this Article.

D. The Agency shall convert income received more frequently than monthly into a monthly amount as follows:
   1. Multiply weekly amounts by 4.3,
   2. Multiply biweekly amounts by 2.15,

3. Multiply semi-monthly amounts by 2.

E. The Agency shall determine a new calculation of projected income:
   1. At each review, and
   2. When there is a change in countable income.

F. The Agency shall determine projected monthly income for an Arizona Works group by the methods described below.
   1. Averaging income.
      a. When using this method, the Agency shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.
      b. The Agency shall average income for an Arizona Works group which receives income:
         i. Irregularly; or
         ii. Regularly, but from sources or in amounts which vary.
   2. Prorating income.
      a. When using this method, the Agency shall average income over the period of time the income is intended to cover.
      b. The Agency shall prorate income for an Arizona Works group which receives income intended to cover a fixed period of time. When a person receives income pursuant to a fixed-term employment contract:
         i. Income is counted in the month received, if received monthly or more often, throughout all months of the contract;
         ii. Income is prorated over the number of months in the contract if payment is received before or during the time work is performed, but not as specified in subsection (F)(2)(b)(i) above; and
         iii. Income is prorated over the number of months in the contract if payment is received upon completion of the work.
      c. For Arizona Works cases under subsection (F)(2)(b)(iii) above, the Agency shall total the resulting amounts for each month and count the amount in the month received as a lump sum under R6-15-504.
   3. Actual income.
      a. When using this method, the Agency shall use the actual amount of income received in a month and shall not convert the income to a monthly amount as indicated in subsection (D).
      b. The Agency shall use actual income for an Arizona Works group which:
         i. Receives or reasonably expects to receive less than a full month's income from a new source,
         ii. Has lost a source of income, or
         iii. Is paid daily.

R6-15-506. Earned Income Disregards

For the purpose of determining income eligibility for an initial applicant, as provided in R6-15-701(B)(3), the Agency shall disregard the following income:
   1. Income of a dependent child, as described below:
      a. All earned income derived from JTPA participation, for up to 6 months per calendar year;
      b. All unearned income derived from JTPA participation; and
      c. All income derived from the Summer Youth Employment and Training Program (SYETP);
   2. A $90 cost of employment disregard for each employed person included in the Arizona Works group;
   3. The full amount of verified billed expenses for the care of each dependent child and incapacitated adult group member who is receiving an Arizona Works cash grant, up to $200.00 a month for a child under 2 years of age and up to $175.00 a month for each other dependent; and
   4. For each wage earning member of the group, 30% of each member's earned income after first applying the disregards listed in subsections (1) through (3) above.

ARTICLE 6. WORK PARTICIPATION; EMPLOYMENT LEVELS

R6-15-601. Assessment

A. Except in child only cases, an applicant shall meet with a job counselor to determine the most appropriate program for self-sufficiency and to develop an individual responsibility plan.

B. The job counselor shall assess the participant's employability, based on the participant's:
   1. Educational and employment history;
   2. Skills, talents, and interests;
   3. Need for child care or other support services; and
   4. Family circumstances and other factors which may affect the participant's employability, including domestic violence as described at R6-15-604(A)(1).

R6-15-602. Assignment of Employment Levels

A. The Agency shall assign the participant to the most appropriate level of employment based on the assessment conducted under R6-15-601.

B. Arizona Works has the following 4 levels of employment listed below:
   1. A Level 1 placement means full time unsubsidized employment in which the job counselor shall assist the person in the employment search.
   2. A Level 2 placement means subsidized, paid employment in which the Agency pays an employer a subsidy to employ a participant in work that will give the participant training and experience designed to improve the participant's employability and help the participant move promptly to unsubsidized employment.
   3. A Level 3 placement means a trial job that is an unsubsidized, unpaid position the Agency has solicited from the community at large and is designed to improve the participant's employability by providing work experience and training to help the participant to move promptly to unsubsidized employment.
   4. A Level 4 placement means a community referral in which the participant chooses a work assignment from a variety of community and faith-based service providers under contract with the Agency.

R6-15-603. Work Requirement

A. A recipient of Arizona Works shall participate in work activities except as provided in subsection (B).

B. The Agency shall not require a recipient to participate in work activities if the recipient is:
   1. A dependent child under age 16, or, age 16 through 18 and attending school; or
   2. Temporarily excused from work participation under R6-15-604.

C. The Agency shall assign all recipients not excused under subsection (B) to work activities for at least the minimum number of hours per week required to meet the work requirement.

R6-15-604. Participants Who are Temporarily Excused

From Work Participation

A. The Agency may temporarily excuse from participation in assigned work activities a recipient who is:
   1. A victim of domestic violence whose participation in work activities poses an immediate threat to the safety of the recipient or the recipient's child.
   2. Experiencing health problems as determined by a licensed physician, which prevent participation in work activities; or
   3. Experiencing a family emergency which prevents participation in work activities;

B. If the Agency excuses a person for domestic violence under subsection (A)(1), the Agency shall limit the deferral to the time the recipient needs to make changes in circumstances which will enable the recipient to safely participate in work activities. The temporary deferral shall not exceed 6 months.

C. The Agency shall temporarily excuse from participation in assigned work activities a recipient who is:
   1. In the last 2 weeks of pregnancy; or
   2. Caring for her newborn child for up to 12 weeks after the child's birth or for a length of time verified as medically necessary by a licensed physician.

D. The Agency shall request, and the participant shall provide, verification to substantiate the reason the participant is being temporarily excused from work participation for a reason listed in this Section.

E. The job counselor shall determine, based on verification provided by the participant:
   1. The appropriateness of a participant's request to be temporarily excused; and
   2. The length of time a participant is temporarily excused from work participation.

R6-15-605. Individual Responsibility Plan

Based on the assessment prescribed in R6-15-601, the job counselor, in consultation with the participant, shall develop an individual responsibility plan for the participant, which shall include:
   1. The participant's responsibility to move toward self-sufficiency and to meet the work requirement;
   2. The participant's employment goal;
   3. The participant's understanding of the consequences for not cooperating with the requirements of Arizona Works;
   4. How the Agency will assist the participant to move toward self-sufficiency; and
   5. Signatures of the participant and job counselor.

R6-15-606. Job Counselor; Assisted Employment Plan

A. If a participant uses the services of the job counselor to obtain employment and meets non-financial eligibility requirements prescribed in Article 3 and financial eligibility requirements prescribed in Articles 4 and 5, the job counselor shall, in consultation with the participant:
   1. Develop the employment plan, and
   2. Assign the participant to 1 of the 4 employment levels in R6-15-602.

B. The employment plan shall include:
   1. The employment goal;
   2. Work activities, including begin and end dates;
   3. Support services the Agency will provide to the participant; and
   4. Signatures of the participant and job counselor.

C. The signed employment plan shall serve as an agreement between the Agency and the participant.

D. The job counselor, in consultation with the participant, may revise the employment plan as needed to ensure the participant continues to advance toward the employment goal.

E. The Agency shall sanction the participant, as set forth in R6-15-802 and R6-15-803 for failure to comply with the terms of the agreement.

F. When an applicant does not use the services of the job counselor, the application for Arizona Works will be denied.

R6-15-607. Education and Training Activities

A. The job counselor may assign a participant to education and training activities, in addition to one of the employment placement levels, as part of the employment plan and as required to help a participant obtain employment.

B. Total participation in the work placement level and education and training activities shall not exceed 40 hours per week.

C. The Agency shall deem a teen custodial parent to meet the work requirement if the teen parent participates in educational activities as described in R6-15-609(A).

D. The job counselor may assign a participant to the following education and training activities:
   1. Employment-related training and education activities, for up to 1 year, which may include:
      a. Technical college courses;
      b. Educational courses that provide an employment skill; and
      c. Other employment-related education and training.
   2. Job readiness training in accordance with limitations as prescribed at R6-15-608;
   3. Secondary school or GED preparation;
   4. English for Speakers of Other Languages (ESOL);
   5. Adult basic education, which includes remedial reading and math; and
   6. Job skills training.

R6-15-608. Employment Search and Job Readiness Activities

A. The job counselor may assign a participant to employment search and job readiness activities as part of the employment plan and as required to help a participant obtain employment.

B. Employment search or job readiness activities, or any combination of the 2, shall count toward the work requirement in accordance with limitations in 42 U.S.C. § 607. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

R6-15-609. Participation Deemed to Be Meeting the Work Requirement

A. The Agency shall deem the following participants to be meeting the work requirement:
   1. An individual who is participating in work activities for at least the minimum average number of hours per week as described in R6-15-603(C);
   2. A single, teen custodial parent, or married teen parent under age 20 who:
      a. Is head of household,
      b. Has not obtained a high school diploma or GED, and
      c. Maintains satisfactory attendance in high school or GED activities; and
   3. A single, teen custodial parent, or a married teen parent under age 20 who:
      a. Is head of household,

b. Has not obtained a high school diploma or GED, and
c. Satisfactorily participates in education directly related to employment for at least the minimum number of hours required to meet the work requirement.

B. A participant who falls in 1 of the categories shown in subsection (A), who is deemed to be meeting the work requirement, may participate in additional work activities.

R6-15-610. Support Services

A. Child Care shall be provided for all Arizona Works work activities, except, in 2-parent families, child care is provided only when both parents are meeting the work requirement.
B. The Agency may provide other support services to enable the participant to engage in work activities and obtain employment.

R6-15-611. Noncompliance; Good Cause

A. If a participant fails to appear for an interview as an assigned work activity, the job counselor shall determine whether good cause exists as described in subsection (D) below.
B. To establish good cause, the participant shall timely notify the job counselor of the reasons for not complying with the work requirements.
C. Good cause for noncompliance with work requirements shall include the following circumstances:
1. The participant had a required court appearance;
2. The participant needed child care to participate in or accept employment and child care was unavailable, unaffordable, or unsuitable;
3. The participant was ill and unable to work;
4. Inclement weather prevented the participant and others similarly situated from traveling to the employment site; or
5. Other comparable or similar circumstances beyond the participant's reasonable control.
D. The job counselor may require the participant to provide written documentation of good cause, including:
1. A court appointment notice, warrant, or subpoena;
2. Information from the DES Child Care Administration;
3. A physician statement;
4. Public knowledge or newspaper article; or
5. When no other verification is available, a signed participant statement containing all factors contributing to the failure to comply.
E. If a participant fails to participate without good cause, the Agency shall sanction the participant under R6-15-802 and R6-15-803.
F. A participant who wishes to appeal Agency determinations regarding good cause or sanctions shall file a written request with the Agency as described in Article 9.

ARTICLE 7. ELIGIBILITY AND PAYMENTS

R6-15-701. Determining Eligibility

A. The Agency shall determine eligibility for a specific benefit month based on its best estimate of all non-financial, resource, and financial criteria that exist, and are expected to exist, for that month.
B. An Arizona Works group is eligible for Arizona Works when the Agency finds that the group:
1. Satisfies the non-financial eligibility criteria described in this Chapter;
2. Does not exceed the resource limits described in Article 4 of this Chapter; and
3. Does not have gross income, less earned income disregards allowed by R6-15-506, in excess of 36% of the 1992 Federal Poverty Level.

R6-15-702. Notice of Determination

A. If the Arizona Works group satisfies all eligibility criteria as specified in this Chapter, the Agency shall send notice of approval to the applicant.
B. If the Arizona Works group does not satisfy 1 or more of the eligibility criteria specified in this Chapter, the Agency shall send a denial notice to the applicant's last known address. The notice shall describe the action taken, the specific authority for the action, the applicant's right to request a hearing to challenge the action, and the procedures for obtaining a hearing.

R6-15-703. Benefits for Participants in Employment Positions

An Arizona Works participant shall receive compensation listed in this section:
1. For Level 1 employment: the unsubsidized amount paid by the employer.
2. For Level 2 employment: the subsidized amount paid by the employer.
3. For Level 3 employment: a maximum monthly grant of $390.00.
4. For Level 4 employment: a maximum monthly grant of $350.00.
5. For pregnant women or a custodial parent of a child who is 12 weeks old or younger: a maximum monthly grant of $390.00 or the amount offered under the parent's employment placement, whichever is less.
6. For child only cases: A maximum monthly grant of $204.00 for the first child and $72.00 per month for each additional child paid to the adult or adult relative who is caring for the child or children.

R6-15-704. Payment of Benefits for Participation in Levels 3 and 4

The Agency shall approve eligibility and the Department shall issue benefits to an eligible Arizona Works group only during a month for which the group is eligible for a payment.

R6-15-705. Non-Receipt of Payments

If a participant reports non-receipt of a payment once work has been completed, the Department shall replace the benefit within 3 work days from the date of the report.

R6-15-706. Protective Payee

A. The Department shall issue benefits to a protective payee who is not a member of the Arizona Works group:
1. On behalf of all group members when a state or tribal protective service agency notifies the Agency that the recipient is mismanaging or misappropriating benefits; and
2. On behalf of all group members other than the designated recipient when the recipient has been disqualified as the result of an intentional program violation and is determined as being ineligible to receive Arizona Works cash payments.
B. The Agency, with the assistance of the recipient, shall select a protective payee, who may be any adult, other than the following:
1. An employee in the Department's Office of Special Investigations.
2. A Department or Agency employee who handles fiscal processes related to the cash assistance program.

3. An Agency officer,
4. An Agency interviewer,
5. An Agency job counselor, or
6. A vendor of goods or services who deals directly with the recipient.

C. Protective payments shall terminate:
1. In cases of mismanagement, upon a determination by the protective services agency that protective payments are no longer required to avoid further mismanagement; and
2. In IPV cases, when the recipient's period of disqualification for the related IPV determination ends.

ARTICLE 8. CHANGES; ADVERSE ACTION

R6-15-801. Reporting Changes

A. As a condition of eligibility, the Arizona Works group shall advise the Agency of all changes in income, resources, employment, or other circumstances which may affect eligibility, within 10 days from the date the change becomes known.

B. A change report is timely if the mailing date is on or before the 10th day from the date the change becomes known.

C. As a condition of eligibility, a custodial parent shall notify the Agency when a dependent child is absent from the home for a period longer than 30 days. The parent shall notify the Agency within 5 days from the date that the parent determines that the dependent child will be absent.

R6-15-802. Sanctions; Applicable to Grant

A. The Agency shall impose a series of graduated sanctions as described in subsection (C) for the following:
1. Failure to comply with an interview with a prospective employer,
2. Failure to comply with assigned educational or training activities, or
3. Failure to comply with assigned work activities.

B. Non-compliance with 1 or more of the requirements listed in subsection (A) during any calendar month is deemed a month of non-compliance and shall result in the sanctions prescribed in subsection (C).

C. The Agency shall impose the following sanctions even if the months of non-compliance are consecutive:
1. For the first sanction due to any non-compliance, the monthly grant is reduced by 25%;
2. For the second sanction due to any non-compliance, the monthly grant is reduced by 50%;
3. For the third or subsequent sanctions due to any non-compliance, the cash grant is terminated for at least 1 month and the termination continues until the participant meets with the job counselor and begins the assigned activities.

D. The Agency shall terminate eligibility for a custodial parent who fails to give notice as prescribed in R6-15-801(C).

R6-15-803. Sanctions; Hourly

A. If a participant is placed in level 3 or 4, the Agency shall reduce the grant amount by $3.25 per hour for each hour the participant misses scheduled employment preparation activities or employment without good cause. The job counselor shall determine good cause under R6-15-611.

B. The Agency shall apply the hourly sanctions to the first pay check possible.

C. For placement under level 2, the employer shall pay the employee for only the number of hours worked, in accordance with the employer's regular policies for all similarly situated employees.

R6-15-804. Effective Date

Ineligibility for an individual member of an Arizona Works group begins on the first day of the first month in which the member or group did not meet the eligibility requirements.

R6-15-805. Notice of Adverse Action

A. When the Agency plans to take adverse action against an Arizona Works group, the Agency shall provide the group with adequate and timely notice, except as provided in subsection (D) below.

B. The Agency shall mail the notice, first class, postage prepaid, to the group's last known residential address, or other designated mailing address.

C. In addition to the information listed in R6-15-101(1), the notice shall contain the following information:
1. The date the adverse action is effective; and
2. Any effect the intended action may have on the group members' other benefits.

D. The Agency may dispense with timely notice, but shall provide adequate notice of adverse action when:
1. A participant or payee dies and no emergency payee is available;
2. A participant makes a written request for termination;
3. A participant is ineligible due to incarceration, hospitalization, or institutionalization in a skilled nursing care or intermediate care facility;
4. A participant receives an hourly sanction under R6-15-803.
5. The participant's address is unknown;
6. The Agency has verified that the participant has been accepted for cash assistance outside the Arizona Works project area;
7. A dependent child who is a member of an Arizona Works group, and is not a child only case, is legally removed from home, or voluntarily placed in foster care by the child's parent or legal guardian; or
8. The participant furnishes information that results in reduction or termination of cash assistance and indicates in writing an understanding of the consequences that may result from furnishing the information.

ARTICLE 9. APPEALS

R6-15-901. Entitlement to a Hearing

A. An applicant for or participant in Arizona Works is entitled to a hearing to contest the following Agency actions:
1. Denial of the right to apply for Arizona Works assistance;
2. Complete or partial denial of an application for Arizona Works assistance;
3. Failure to make an eligibility determination on an application within 45 days of the application date;
4. Suspension, termination, reduction, or withholding of Arizona Works assistance except as provided in subsection (B).
5. The existence or amount of an overpayment attributed to the group, or the terms of a plan to repay the overpayment;
6. Changing the manner or form of payment, including naming a protective payee to receive the benefit payment; or
7. Denial or termination of child care benefits.

B. Applicants and participants are not entitled to a hearing to challenge benefit adjustments made automatically as a result

of changes in federal or state law, unless the Agency has incorrectly applied the law to the individual seeking the hearing.

R6-15-902. Request for Hearing

A. A person who wishes to appeal an adverse action shall file a written request for a fair hearing with an Agency office, within 5 days after the date of the notice of adverse action.

B. A request for a hearing is deemed filed:
   1. On the date it is mailed, if transmittal via the United States Postal Service or its successor. The mailing date is as follows:
      a. As shown by the postmark;
      b. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
      c. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
   2. On the date actually received by the Agency, if not sent through the mail as provided in subsection (1).

C. The submission of any document is timely if the appellant proves that delay in submission was due to Agency error or misinformation, or to delay caused by the U.S. Postal Service or its successor.

D. Any document mailed by the Agency is deemed received by the addressee 3 days after the date it is mailed to the addressee's last known address. The date mailed is presumed to be the date shown on the document, unless otherwise indicated by the facts. Time is computed in accordance with Rule 6(a) of the Rules of Civil Procedure, 16 A.R.S.

E. The Agency shall deny any request that is not timely filed. A party may request an appeal on the timeliness of an appeal.

R6-15-903. Scheduling a Hearing

The Agency shall schedule and conduct the hearing at the office location most convenient to the interested parties, within 30 days after the notice of appeal is filed.

R6-15-904. Notice of Hearing

A. The Agency shall issue all interested parties a notice of the hearing at least 5 calendar days before the hearing.

B. The notice of hearing shall be in writing and shall include the following information:
   1. The date, time, and place of the hearing;
   2. The name of the hearing officer;
   3. The issues involved in the case;
   4. A statement listing the appellant's rights, as follows:
      a. To appear in person or by telephone;
      b. To have a representative present the case;
      c. To copy, at a reasonable time prior to the hearing, or during the hearing, any documents in the appellant's case file which are relevant to the issues being heard, and all documents the Agency may use at the hearing;
      d. To obtain assistance from the Agency to prepare for the hearing; and
      e. To obtain, from the Agency, information on available community legal resources who may be able to represent the appellant.

R6-15-905. Hearing Procedures; Hearing Officer

A. The Agency shall appoint an impartial hearing officer to conduct all hearings.

B. The hearing officer shall:
   1. Administer oaths and affirmations;
   2. Regulate and conduct the hearing in an orderly and dignified manner, which avoids undue repetition and affords due process to all participants;
   3. Ensure that all relevant issues are considered;
   4. Exclude irrelevant evidence from the record;
   5. Request, receive, and incorporate into the record the relevant evidence presented;
   6. Order, when relevant and useful to a resolution of the issue in a case, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the Agency;
   7. Upon compliance with the requirements of subsection (C), subpoena witnesses or documents needed for the hearing;
   8. Open, conduct, and close the hearing;
   9. Rule on the admissibility of evidence at a hearing;
   10. Direct the order of proof at the hearing;
   11. For good cause shown, and upon the request of an interested party, or on the hearing officer's own motion, take such action as the hearing officer deems necessary to the proper disposition of an appeal, including, without limitation, the following:
      a. Recuse or disqualify himself or herself from the case;
      b. Continue the hearing to a future time or date;
      c. Prior to entry of a final decision, reopen the hearing to take additional evidence;
      d. Deny or dismiss the appeal or request for hearing in accordance with the provisions of this article;
      e. Exclude non-party witnesses from the hearing room; and
   12. Issue a written decision deciding the appeal.

C. Subpoenas.
   1. A party who wishes to subpoena a witness, document, or other physical evidence shall make a written request at least 5 days before the scheduled hearing date.
   2. The request shall describe:
      a. The case name and number;
      b. The party requesting the subpoena;
      c. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony; and
      d. A description of any documents or physical evidence to be subpoenaed, and the name and address of the custodian of the document or physical evidence.
   3. The hearing officer shall deny the request if the witness's proposed testimony is not relevant to the issues in the hearing.
   4. The hearing officer shall prepare all subpoenas and arrange for their service.

D. An appellant may request a change in hearing officer by filing a written request at least 5 days before the hearing. The appellant is limited to 1 request.

R6-15-906. Hearing Procedures; Conduct of Proceeding

A. Standard of review and burden of proof.
   1. The hearing is a de novo proceeding. To prevail on appeal, the appellant must prove eligibility for assistance by a preponderance of the evidence.
   2. The Agency has the initial burden of going forward with presentation of the evidence.
   3. The appellant must provide evidence that the adverse action that is being challenged is not based on reasonable information.

B. Appearance by parties and representatives.

1. An appellant may appear via telephone conference call or submit a written statement under oath, instead of appearing personally at the hearing. The appellant shall file the personal statement with all other witness statements and documents the appellant wishes to offer in evidence, with the hearing officer before the time of the hearing.
2. The Arizona Works job counselor, Arizona Works supervisor, or another appropriate person may testify for the Agency at the hearing.

C. Evidence and argument.
1. The appellant shall testify, present evidence, cross-examine witnesses, or present arguments as to why the action taken is unlawful or improper.
2. The hearing officer shall exclude irrelevant evidence from the record.

D. The record.
1. The hearing officer shall keep a complete record of all proceedings in connection with an appeal. The appellant or the appellant's designated representative may inspect the record on appeal at any reasonable time.
2. The Agency need not transcribe the record unless it is required for further proceedings.
3. If the record is transcribed, the appellant may have a free copy, upon request.

R6-15-907. Hearing Procedures: Decision

A. No later than 90 days after the date the appellant files a request for appeal, the hearing officer shall issue a written decision based solely on the evidence and testimony produced at the hearing, and applicable federal and state law. The time limit is extended for any delay caused by the appellant.

B. The decision shall include:
1. Findings of facts pertinent to the issue;
2. Citations to the law and authority applicable to the case;
3. A statement of conclusions derived from the controlling facts and law, and the reasons for the conclusions; and
4. A statement of further appeal rights available to the appellant and the time period for exercising those rights.

C. The Agency shall mail or deliver a copy of the decision to each interested party or the party's attorney of record.

D. The hearing officer's decision is the final Agency decision.

R6-15-908. Further Appeal

A. An applicant or recipient may seek judicial review of the hearing officer's decision under A.R.S. Title 41, Chapter 6, Article 10.

B. All other decisions may be appealed as prescribed in:
1. A.R.S. Title 41, Chapter 14, Article 3, for food stamp matters.
2. A.R.S. Title 41, Chapter 14, Article 3, for medical assistance.

ARTICLE 10. OVERPAYMENTS

R6-15-1001. Collection

A. Except as provided in subsection (D), the Department's Office of Accounts Receivable and Collections shall pursue collection of all overpayments.

B. The Agency shall write an overpayment report within 90 days of determining that an overpayment exists.

C. If the Agency suspects that an overpayment was caused by fraudulent activity, the Agency shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.

D. The Department shall not try to collect an overpayment from a person who is not a current recipient when the overpayment was not the result of an intentional program violation or fraud, and:
1. The total overpayment is less than $35; or
2. The Department has exhausted reasonable efforts to collect an overpayment of $35 or more, and has determined that it is no longer cost-effective to pursue the claim.

R6-15-1002. Notice

The Department shall issue a notice of overpayment to the Arizona Works group after the Department receives an overpayment report from the Agency.

R6-15-1003. Persons Liable

A. The Department shall pursue collection of an overpayment from:
1. The Arizona Works group that was overpaid;
2. Any Arizona Works group of which a member of the overpaid group has subsequently become a member; or
3. Any individual member of the overpaid group, even if that member is not currently receiving benefits.

B. The Department shall try to collect first from the caretaker relative, or the caretaker relative's current Arizona Works group. If the caretaker relative is unavailable due to death or disappearance, or was not a member of the overpaid group, the Department shall try to collect from the other members of the overpaid group, or the other members' current Arizona Works groups.

R6-15-1004. Recoupment

A. When an overpaid Arizona Works group is currently receiving benefits, the Department shall permit the group to choose 1 of the following repayment methods:
1. Offset against any underpayment due the group;
2. Cash payments;
3. Reduction in current benefits for participation in employment positions, in an amount not to exceed 10% of the group's monthly payment, unless the group desires a larger reduction;
4. A combination of the above methods.

B. If the repayment reduces the group's cash assistance to zero, the group shall remain eligible for Arizona Works for all other purposes.

C. If the Arizona Works group is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

ARTICLE 11. INTENTIONAL PROGRAM VIOLATION

R6-15-1101. Disqualification

A. An intentional program violation (IPV) is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for Arizona Works or for increasing or preventing a reduction in the amount of the benefit, and which is:
1. Intentionally false or misleading statement or misrepresentation, concealment, or withholding of facts; or
2. Intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

B. For the purpose of imposing sanctions under R6-15-1103, a person is deemed to have committed an IPV if:
1. The person signs a waiver of an administrative disqualification hearing;
2. The person is found to have committed an IPV by an administrative disqualification hearing; or

3. The person is convicted of IPV or fraud in a court of law.

R6-15-1102. Disqualification Proceedings

A. The Department shall initiate an administrative disqualification proceeding, or a referral for prosecution, upon receipt of sufficient documentary evidence substantiating that an Arizona Works group member has committed an IPV.

B. The Agency shall cooperate with the Department in all aspects of the disqualification hearing.

C. When the Department initiates a disqualification proceeding, the Department shall mail the Arizona Works group member suspected of an IPV written notice of the right to waive the disqualification hearing.

D. The waiver notice shall include the following information:
1. The charges against the suspected violator and a description of the evidence supporting the charges;
2. An explanation of the disqualification sanctions imposed for intentional program violations;
3. A warning that the administrative proceeding does not preclude other civil or criminal court action;
4. The date by which the Department must receive the signed waiver notice should the suspected violator wish to avoid the hearing;
5. Signature lines for the suspected violator and the suspected violator's current caretaker relative if the suspected violator is not the caretaker relative;
6. A statement that the caretaker relative must also sign the waiver if the suspected violator is not the caretaker relative;
7. A statement of the suspected violator's right to remain silent concerning the charge;
8. A warning that anything said, written, or signed by the suspected violator concerning the charge may be used against him or her in administrative proceedings or a court of law;
9. A warning that any waiver of the hearing establishes an IPV, eliminates the right to further administrative appeal, and will result in disqualification and a reduction in the cash assistance for other Arizona Works group members for the period of disqualification;
10. Statements providing the suspected violator an opportunity to admit to the facts supporting disqualification or waive the hearing without admitting to the facts;
11. The name, address, and telephone number of a Department representative who the suspected violator may contact for further information;
12. A list of persons who and organizations which may provide the suspected violator with free legal advice regarding the IPV; and
13. A warning that the Department shall hold any remaining group members responsible for repayment of any overpayment arising from the IPV.

E. For the purpose of imposing sanctions under R6-15-1103, a signed waiver notice has the same effect as an administrative adjudication that an IPV occurred.

R6-15-1103. Disqualification Sanctions

A. An Arizona Works group that contains a person found to have committed an IPV is disqualified from program participation for 1 year for the first violation; 2 years for the second violation; and permanently for the third violation.

B. Upon a determination of IPV, the Agency shall notify the violator of the pending disqualification. The notice shall:
1. Inform the violator of the decision and the reasons for the decision;
2. Provide the beginning date and duration of the disqualification, including an explanation of any deferment of disqualification; and
3. Explain the consequences of the disqualification on group members other than the violator.

R6-15-1104. Disqualification Hearings

A. If the suspected violator does not sign and return the waiver notice by the return date set in the waiver notice, the Agency shall send the suspected violator a written notice of hearing at least 30 days before the scheduled hearing.

B. If the case involves Food Stamps or Medical Assistance in addition to Arizona Works assistance, the Agency shall send the notice by mail, return receipt requested.

C. The notice of hearing shall include the following information:
1. The date, time, and place of the hearing;
2. The charges against the suspected violator;
3. A summary of the evidence supporting the charges;
4. The location where the suspected violator may examine the supporting evidence before the hearing;
5. A warning that the hearing officer shall render a decision based solely on the evidence the Agency offers if the suspected violator does not appear for the hearing;
6. An explanation of the suspected violator's right to show good cause for a failure to appear at the hearing and the procedure for doing so;
7. An explanation of the sanctions the Agency shall impose if the hearing officer finds that the suspected violator committed an IPV;
8. A listing of the suspected violator's procedural rights;
9. A warning that the pending administrative hearing does not preclude other civil or criminal court action;
10. A statement advising of any free legal advice which may be available;
11. A statement explaining how to obtain a copy of the Agency's published hearing procedures; and
12. A statement that the suspected violator may have the hearing postponed by contacting the hearing officer at least 10 days before the hearing date and asking for a postponement.

C. The hearing officer shall postpone a hearing for up to 30 days if the suspected violator files a written request for postponement with the hearing official no later than 10 days before the scheduled hearing date. Any postponement days increases the time for the hearing officer's decision, as provided in subsection (F).

D. At the start of the disqualification hearing, the hearing officer shall advise the suspected violator or representative of the right to remain silent during the hearing, and the consequences of exercising that right.

E. A hearing officer, as described in R6-15-905, shall conduct the disqualification hearing pursuant to the procedures set forth in R6-15-906 and R6-15-907, except as prescribed in this subsection.
1. The suspected violator does not need to request a hearing.
2. The Agency shall prove, by clear and convincing evidence, that the household member committed an IPV.
3. So long as the Agency sent an advance notice of hearing as provided in subsections (A) and (B) above, the hearing officer shall conduct the disqualification hearing even if the suspected violator or representative cannot be located or fails to appear at the hearing without good cause.

F. No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send the suspected violator a written decision as described in R6-15-907, and with the information described in R6-15-1103(B).

R6-15-1105. Appeals

A. If an IPV is established through an administrative disqualification hearing the violator may appeal the decision to the Superior Court.

B. If an IPV is established through a signed waiver of a disqualification hearing, the violator has no right to further administrative appeal.

R6-15-1106. Recognizing Out of State IPV Determinations

The Agency shall honor sanctions imposed against an applicant or recipient by the Department or an agency of another state, and shall consider prior violations committed in another area or state when determining the appropriate sanction.

ARTICLE 12. SUBSIDIZED EMPLOYMENT PROGRAM

R6-15-1201. Subsidized Employment Program

A. The job counselor may assign a participant to the Subsidized Employment Program after assessing the participant's skills and experience, as described in R6-15-601, and developing an employment plan, as described in R6-15-606.

B. The Agency shall make referrals to employers by matching a participant's skills, experience, and employment goal with employer requirements.

C. Participants shall work up to 40 hours per week. The minimum number of hours is determined by the work requirement.

D. A participant shall receive at least the federal minimum hourly wage.

E. The Agency shall schedule the participant for an interview with the prospective employer and notify the participant of the interview date, place, and time.

F. The employer shall decide whether to hire the participant.

G. A participant shall abide by an employer's regular requirements regarding:
1. Submitting an application for employment;
2. Appearing for interviews;
3. Providing necessary information such as citizenship verification;
4. Hours of employment;
5. Attendance;
6. Job performance;
7. Conduct; and
8. Other similar conditions of the employment.

H. A participant shall:
1. Appear for any required assessment interview with the job counselor;
2. Accept and maintain subsidized employment;
3. Establish good cause for failing to participate, as described in R6-15-611;
4. Report changes to the job counselor which affect subsidized employment participation such as:
   a. Accepting or refusing an offer of permanent employment;
   b. Absence from or termination of employment;
   c. Job position or function modifications; and
   d. Other similar events.

I. At the end of each work week, a participant shall complete and sign the Agency form on which the participant shall indicate his or her name, days and hours worked, and pay received. The participant shall obtain the signature of his or her supervisor, or the supervisor's designee, on the form and send the form to his or her job counselor.

J. The job counselor shall reassess the person's employability after each 6 months of an individual's participation in subsidized employment.

K. Subsidized employment assignments may continue for up to 6 months with an option to renew the placement for an additional 3 months at the discretion of the job counselor if the employer and the participant agree to continue the employment.
1. If a participant's employer wishes to request an extension, the employer shall request the extension in writing and shall provide the following information on which the job counselor shall base the decision to extend:
   a. Name of the participant for whom the extension is requested;
   b. Position for which an extension is requested;
   c. What additional experience or training is needed to achieve competency;
   d. The employer's expectation for hiring the individual following the extension;
   e. The length of the extension; and
   f. Any information the employer has to show that extension is necessary.
2. A participant who receives an extension of the subsidized employment placement shall conduct a job search for up to 8 hours per week during the extension; and
3. The employer shall consider time the participant spends in job search, up to 8 hours per week, as hours worked for the purpose of paying wages.

L. If the subsidized employer does not hire the participant for an unsubsidized position after 9 months in the placement, the job counselor, with the concurrence of the participant, shall terminate the placement and reassess the participant's employment needs.

M. Total subsidized employment time for a participant shall not extend past four 6-month assignments, for a total of 24 months.

N. The employer may terminate the assignment by contacting the job counselor.

O. Upon receipt of a termination request the job counselor shall review the placement to determine whether the employer or the participant violated work requirements. If no violation occurred, the job counselor shall:
1. Reassess the needs and skills of the participant, and
2. Assign the participant to:
   a. Another subsidized employment placement, or
   b. Placement in another employment level or work activity.

P. If the employer terminates the participant for willful misconduct during employment, or if the participant refuses to comply with work requirements, refuses to accept a subsidized employment assignment without good cause, or establishes a pattern of early self-termination from Program placements, the job counselor shall:
1. Place the participant in an appropriate employment level, and
2. Sanction the participant under R6-15-802 and R6-15-803.

R6-15-1202. Subsidized Employer Program; Employer Participation

A. To qualify for participation in the subsidized employment program, an employer shall:

1. Agree to place a participant in a position for a number of hours that is not less than that required by the federal work requirement and not more than 40 hours per week;
2. Reasonably expect to offer the participant an opportunity for full-time, unsubsidized employment;
3. Not put the participant in a position that will displace a regular employee;
4. Limit the number of subsidized employees to at least 1 employee but no more than 10% of the workforce, unless the Agency grants a waiver allowing more under R6-15-1203;
5. Pay wages that are equal to wages paid for similar jobs, with like adjustments for experience and skills, but never less than federal minimum wage;
6. Provide on-the-job training, including workplace mentoring, to the degree a participant needs to perform job duties;
7. If a registered contractor, provide on-the-job training by enrolling the participant in a program approved by the Department of Labor, Bureau of Apprenticeship and Training;
8. Maintain safety, health and working conditions at or above levels generally acceptable in the industry and no less than that of comparable jobs offered by the employer;
9. Provide health care coverage, sick leave, holiday and vacation leave, and other comparable benefits in conformance with the employer's rules for temporary employees;
10. Provide Worker's Compensation coverage;
11. Help the participant obtain any advance Earned Income Credit for which the participant may be eligible;
12. Sign an agreement for each placement outlining the specific job offered to the participant and agreeing to abide by all requirements of the subsidized employment program.

B. If the employer satisfies the criteria listed in subsection (A), the employer may place a job order with the Agency. The order shall include the following information on the available position:

1. Days and hours of work,
2. Wages,
3. Description of responsibilities,
4. Benefits,
5. Opportunity for advancement, and
6. Other pertinent job-related information.

C. An employer who wishes to hire a participant shall sign an agreement with the Agency.

1. The employer shall affirm that the employer satisfies all the criteria in this Section and shall continue to meet the criteria while participating in the Subsidized Employment Program.
2. If the employer violates a Subsidized Employment Program requirement, the employer shall repay any reimbursements the employer receives after the date of the violation.
3. The employer shall avoid conflicts of interest and the appearance of impropriety or favoritism in hiring practices, such as preferential hiring of relatives, friends and business associates.
4. The employer shall prepare and provide to the Agency the following reports:
   a. Each week, the employer shall verify and sign a time sheet for each participant stating:
      i. Gross wages,
      ii Participant net earnings,
      iii. Number of paid hours of work (including paid hours of leave),
      iv. Hours for which a participant was not paid because the participant had an unexcused absence, and
      v. Hours for which the participant was not paid because the employer reduced available work hours.
   b. For the first 3 months of a placement, the employer shall complete and provide to the Agency, no later than the 10th workday of each calendar month following a month of work, a 1-page report on each participant's performance with the following information:
      i. Skills (competencies) gained as a result of employment;
      ii Ability to correctly and timely complete assignments;
      iii. General work habits such as punctuality, absenteeism, and neatness of work area; and
      iv. Development of effective and efficient working relationships with people, including supervisors, peers, and subordinates.
5. An employer shall allow Agency staff to schedule and make visits to the work site to observe a participant's work activities and interview the participant.

D. The employer, an Agency representative, and the participant shall sign and date the agreement.

E. An employer who wishes to participate in the Subsidized Employment Program shall also provide the Agency with a signed, dated, and certified form. On the form, the employer shall certify that the information listed below is true, as to the employer, and its principal officers and directors.

1. The employer is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency, the State of Arizona, or any other state.
2. The employer has not, within the preceding 3 years, been convicted of or had a civil judgment rendered against the employer for:
   a. Fraud,
   b. Antitrust,
   c. Embezzlement,
   d. Theft,
   e. Forgery,
   f. Bribery,
   g. Falsification or destruction of records,
   h. Making false statements, or
   i. Receiving stolen property.

F. For each participant the Agency shall reimburse an employer an amount not to exceed $300 per month.

G. The Agency shall issue the reimbursement no later than the 25th day of the same calendar month in which the employer's report is timely received. Late receipt of the form may delay reimbursements.

H. The Agency shall terminate the employer's participation in the Subsidized Employment Program if the employer has shown a pattern of either terminating participants before the completion of training or of not offering unsubsidized employment to participants who have successfully completed training with the employer.

1. The Agency shall consider each occurrence of either circumstance in establishing the pattern.

2. The Agency shall not allow the employer to participate in the Subsidized Employment Program if the total occurrences exceed the greater of the following figures, unless the employer can establish good cause:
   a. 2 occurrences; or
   b. 20% of the total number of participants placed with the employer.
3. If the employer claims good cause, the employer shall provide proof that the participant failed to meet the employer's requirements under R6-15-1201(G), and that the employer attempted to establish a reasonable alternative with the participant but was unsuccessful, due to circumstances beyond the employer's control.

I. If the Agency determines that an employer has violated Subsidized Employment Program requirements, the Agency shall take all of the following adverse actions against the employer:
   1. Withhold any subsidized payments due the employer, following the date of the violation;
   2. Seek repayment of any amounts overpaid to the employer; and
   3. Bar the employer from further participation in the Subsidized Employment Program.

J. If the Agency plans to take adverse action against an employer, the Agency shall send the employer a written notice of adverse action. The notice shall include:
   1. The name and address of the employer,
   2. The action taken and the reason for the adverse action,
   3. The authority for the action, and
   4. The employer's appeal rights.

K. An employer who disagrees with the amount of an unsubsidized payment, or who is subject to adverse action under subsection (I), may file a grievance with the Agency.

L. The Agency shall conduct grievance procedures according to R6-10-303, except that the Agency will substitute for the Department.

R6-15-1203. Limits on Employer Participation; Workforce Waiver

A. An employer may hire 1 or more participants but shall not fill more than 10% of the employer's total workforce at a work site with participants unless the Agency approves a workforce waiver for the employer.

B. An employer interested in obtaining a workforce waiver shall request the workforce waiver in writing to the Agency. The employer shall provide the following information concerning the work site for which the employer seeks a waiver:
   1. Employee data, including:
      a. The number of employees employed at the work site;
      b. The number and type of positions available to participant; and
      c. The wages and hours of the available positions;
   2. The percentage of the employer's workforce that the employer seeks to fill with participants and the total participant workforce percentage if the requested waiver is approved;
   3. A statement that existing employees will not be displaced by the waiver, by the increased numbers of participants that may be hired; and
   4. A statement explaining why the potential hires will benefit.

C. The Agency shall consider the information provided by the employer and the following factors in determining whether to grant the requested waiver:
   1. Lack of suitable positions with other employers;
   2. Quality of the employer's training and mentoring program;
   3. Transferability of skills to other employment opportunities;
   4. Local labor market factors affecting the employability of persons with the skills to be acquired;
   5. Employer's history regarding permanent hiring of participants in unsubsidized employment; and
   6. Wages, advancements, and other comparable factors.

D. The Agency shall send the employer a written notice advising the employer as to:
   1. Whether the Agency will grant a waiver;
   2. The waiver percentage allowed; and
   3. The time period for the waiver, which shall not exceed 1 year.

E. The Agency shall not be obligated to renew a waiver and may cancel a waiver on 60 days' notice to the employer.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

PREAMBLE

1. **Section Affected** — **Rulemaking Action**
   R17-4-226 — Amend
   Appendix A — Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Authorizing Statute: A.R.S. § 28-366

   Implementing Statute: A.R.S. §§ 28-4148, as amended by Laws 1998, Ch. 288, § 5, effective August 21, 1998.

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
   Name: Lynn S. Golder, Rules Attorney

   Address: Arizona Department of Transportation, Motor Vehicle Division

4747 North 7th Avenue, 3rd Floor
Phoenix, Arizona 85013

Telephone: (602) 255-7941

Fax: (602) 241-1624

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rulemaking amends R17-4-226 to implement the statutory requirements enacted since 1995, to acknowledge new technology, and to correct a statutory citation that is no longer correct.

The proposed rulemaking implements the statutory requirement that insurance companies report motor vehicle liability policy cancellations, nonrenewals or new policy issues to the Motor Vehicle Division by electronic data interchange. After July 1998, computer-to-computer reporting will be required of insurance companies with 10,000 or more motor vehicle liability policies in place. Insurance companies with less than 10,000 motor vehicle liability policies in place as of August 21, 1998, may report by cartridge tape only through July 1999. Computer-to-computer reporting will be required of all insurance companies after July 1999.

The proposed rulemaking also implements the statutory requirement that, after July 1998, insurance companies with 10,000 or more motor vehicle liability policies in place will have a 7-day reporting period. Implementing legislation enacted in 1998, insurance companies with less than 10,000 motor vehicle liability policies in place as of August 21, 1998, may maintain a 30-day reporting period only through July 1999. A 7-day reporting period will be required of all insurance companies after July 1999.

Finally, the proposed rulemaking corrects the statutory reference from A.R.S. § 28-1262 to § 28-4148, in accordance with the renumbering of A.R.S. Title 28, effective October 1, 1997.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

Benefits of insurance company reporting. Insurance company reporting of lapsed motor vehicle liability policies to the Motor Vehicle Division decreases the number of uninsured vehicles on Arizona roads, which in turn decreases the number of uninsured motor vehicle accidents. For example, of lapsed policies reported by insurance companies in 1996, less than 10% of vehicle registrations and number plates were ultimately suspended by the Division. The low rate of suspensions indicates that the Division's intent-to-suspend notices, based on insurance company reports, have provided motivation to owners of uninsured vehicles. Thus, those injured in motor vehicle accidents have financial means available for medical assistance. The families of those injured in motor vehicle accidents are protected from incurring financial burdens that could result in seeking public assistance. Advances in information technology allow for more frequent and efficient reporting by insurance companies, providing better protection to the public from uninsured motor vehicle accidents.

Economic impact of promulgation of R17-4-226 and its subsequent amendment. For the 1992 inception of insurance company reporting, the Motor Vehicle Division incurred moderate costs for computer programming and personnel. In 1994 the Division incurred minimal costs for reprogramming in accordance with statutory change. Insurance companies initially incurred moderate programming costs followed by minimal monthly costs of reporting by tape to the Division and minimal reprogramming costs in 1994. Consumers of motor vehicle liability insurance incurred minimal costs from the shifting by insurers of programming and report expenses, offset by the benefit to consumers of fewer uninsured motor vehicle accidents. As to the small business impact of R17-4-226 in 1992, small businesses constituted less than 10% of the hundreds of insurance companies authorized to write motor vehicle liability policies in Arizona. While the cost of reporting was recognized as potentially prohibitive for a company writing only a few policies in Arizona each year, the Division had no practical way to reduce the impact on small businesses and still satisfy the statutory requirement of tape reporting.

Current statutory requirements. Electronic data interchange reporting was statutorily required as of January 1, 1998. The Motor Vehicle Division has reasonably determined that all insurance companies will use computer-to-computer reporting after July 1999. Approximately 200 insurance companies now report by cartridge tape and 20 companies use computer-to-computer reporting. Weekly reporting is statutorily required after July 1998 for insurance companies with 10,000 or more policies in place, and after July 1999 for insurance companies with less than 10,000 policies in place as of August 21, 1998.

Economic impact of weekly computer-to-computer reporting. Computer-to-computer reporting makes use of advances in information technology and will allow the Motor Vehicle Division to avoid the accumulation of cartridge tapes from weekly reporting. It should be noted that the cost to insurance companies of weekly cartridge tape reporting would not be negligible. As to computer-to-computer reporting, the Division has incurred and will incur substantial costs for programming, personnel, and accepting reports through IBM Global Services, Network Services in association with AAMVAnet. Insurance companies will incur software program costs and the costs of obtaining a value added network or service provider. Information provided by the Arizona Department of Insurance indicates that insurance companies writing motor vehicle liability policies certainly have the computer hardware in place. Some insurance companies may find the software program and value added network or service provider costs unacceptable and cease doing motor vehicle liability business in Arizona. On the other hand, the 3 biggest companies currently write 80% of Arizona motor vehicle liability policies; 20 companies currently do 95% of the business. The companies' costs will be shifted to consumers, offset by the benefit to consumers that more efficient and expeditious reporting of lapsed pol-

icies to the Division will continue to decrease the number of uninsured Arizona-registered vehicles and uninsured motor vehicle accidents in this state.

Benefits of weekly computer-to-computer reporting outweigh costs. The Motor Vehicle Division has determined that the proposed rulemaking provides for compliance with all statutory requirements in the most efficient and practical manner. Additionally, the benefits to the public of fewer uninsured vehicles and uninsured motor vehicle accidents outweigh the economic impact on consumers, insurance companies, small businesses, and the Division.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name:	Lynn S. Golder, Rules Attorney
Address:	Arizona Department of Transportation, Motor Vehicle Division 4747 North 7th Avenue, 3rd Floor Phoenix, Arizona 85013
Telephone:	(602) 255-7941
Fax:	(602) 241-1624

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

A person may submit written comments on the proposed rulemaking or economic impact statement by submitting the comments to the person specified in question # 3 no later than the close of the record, which is scheduled for Monday, August 17, 1998, at 5 p.m.

Oral proceedings are scheduled as follows:

	Phoenix
Date:	Tuesday, August 11, 1998
Time:	2 p.m. to 4 p.m.
Location:	Arizona Department of Transportation Auditorium 206 South 17th Avenue, Room 107 Phoenix, Arizona 85007
	Tucson
Date:	Wednesday, August 12, 1998
Time:	1 p.m. to 3 p.m.
Location:	Motor Vehicle Division Tucson Regional Office Conference Room 3565 South Broadmont Drive, Second Floor Tucson, Arizona 85713
	Flagstaff
Date:	Friday, August 14, 1998
Time:	10 a.m. to noon
Location:	Motor Vehicle Division Flagstaff Field Service Center Conference Room 1851 South Milton Road Flagstaff, Arizona 86001

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
Not applicable.

11. **The full text of the rules follows:**

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES AND REGISTRATION

Section
R17-4-226

ARTICLE 2. TITLES AND REGISTRATION

R17-4-226 Insurance Company Reporting Requirements

A. Definitions. ~~Definitions~~

In this Section, unless the context otherwise requires:

1. "American Association of Motor Vehicle Administrators" or "AAMVA" means a voluntary, nonprofit, tax-exempt, educational organization of state (United States) and provincial (Canada) officials responsible for the administration and enforcement of motor vehicle laws.
2. "Cartridge tape" means reeled magnetic tape contained in a case and conforming to the cartridge tape specifications described in Appendix A of this Section.
3. ~~1.~~ "Company" means an ~~any~~ insurance or indemnity company authorized to write motor vehicle liability coverage in the State of Arizona.
4. "Electronic data interchange" or "EDI," means a form of computer-to-computer reporting from a company accepted by the Motor Vehicle Division or reporting by cartridge tape from a company to the Motor Vehicle Division and accepted by the Motor Vehicle Division in accordance with subsections (G) and (H) of this Section.
5. "File transfer protocol" or "FTP" means a method of Internet reporting using a Transmission Control Protocol/Internet Protocol (TCP/IP) software program to upload or download data files.
6. "Information exchange" or "IE" means a software program used by IBM Global Services, Network Services in association with AAMVAnet for exchanging data files.
7. "Network job entry" or "NJE" means a service using Job Entry Subsystem (JES) or equivalent for a spooling software program on IBM processors, and implemented using IBM Global Services JES as an intermediate node.
8. "Node" means the point where one or more functional units interconnect transmission lines.
9. "Remote job entry" or "RJE" means a service similar to NJE for systems without JES but able to use JES remotely, for example, using 3780 hardware or an emulator environment.
10. ~~2.~~ "Reporting ~~Tape reporting~~" means the periodic EDI transmission from a company to the Motor Vehicle Division ~~monthly magnetic tape reporting, as described in Appendix A of this rule,~~ of motor vehicle insurance cancellations, nonrenewals, and new issues on a vehicle in Arizona as required by A.R.S. § 28-4148 ~~§28-1262(A) from a company to the Motor Vehicle Division~~, and in accordance with this Section.
11. "Service provider" means a third party that provides a value added network (VAN) to a company for EDI reporting.
12. "Trading partner" means the receiver or sender of data in an EDI configuration.
13. "Trading partner account number" means the identifying number of the receiver or sender of data in an EDI configuration.
14. "Value added network" or "VAN" means a data communications network providing value-added features, such as error control, alternate routing, protocol conversion, and time-shared data processing.
15. "x12 811" or "x12" means the standard of the Consultative Committee International for Telegraphy and Telephony (CCITT) for EDI.

B. Accepted EDI Reporting Forms and Reporting Requirements ~~requirements~~.

1. A company shall submit EDI reporting ~~The tape reporting shall be submitted~~ in a form accepted by the Motor Vehicle Division and in accordance ~~conformance~~ with this Section ~~the tape specifications and record layout set forth in Appendix A of this rule~~.
2. A company shall submit EDI reporting in one of the following forms:
   a. Cartridge tape only for a company with less than 10,000 policies in place as of August 21, 1998, and only through July 30, 1999;
   b. IE, NJE, and RJE;
   c. FTP and X12 only after June 30, 1999.
3. If, through July 30, 1999, a company submits EDI reporting by cartridge tape, the company shall submit the certification of the number of policies in place required by subsection (H) of this Section. The cartridge tape reporting shall be in accordance with the cartridge tape specifications and record layout described in Appendix A of this Section.
4. If a company submits EDI reporting computer-to-computer by IE, NJE or RJE, the company shall obtain a VAN or service provider, obtain any necessary software, obtain the Motor Vehicle Division's trading partner account number, and arrange for and conduct an initial transmission of data to the Motor Vehicle Division.
5. If, after June 30, 1999, a company submits EDI reporting computer-to-computer by FTP, the company shall obtain any necessary software, obtain the Motor Vehicle Division's Internet address, and arrange for and conduct an initial transmission of data to the Motor Vehicle Division.
6. If, after June 30, 1999, a company submits EDI reporting computer-to-computer by X12, the company shall obtain a VAN or service provider, obtain any necessary software, obtain the Motor Vehicle Division's trading partner account number, and arrange for and conduct an initial transmission of data to the Motor Vehicle Division.

C. Reporting Period for a Company with 10,000 or More Policies.

1. ~~B. 2.~~ On Wednesday, July 15, 1998, ~~On or before the 15th day of each month,~~ a ~~each~~ company with 10,000 or more motor vehicle liability policies in place shall submit to the Motor Vehicle Division an EDI ~~a tape~~ reporting of all cancellations, nonrenewals or new policy issues ~~which have occurred~~ processed by the company 30 or fewer days prior to the reporting date ~~at least 30 days~~

~~prior to the reporting date and which have not been previously reported~~.

2. On Friday, July 31,1998, a company with 10,000 or more motor vehicle liability policies in place shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company from the reporting submitted in accordance with subsection (C)(1) on July 15, 1998, through July 30, 1998.
3. On Friday, August 7, 1998, and on every successive Friday, a company with 10,000 or more motor vehicle liability policies in place shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company 7 or fewer days prior to the reporting date.

D. Reporting Period for a Company with Less than 10,000 Policies that Fails to Submit the Required Certification.
1. On Tuesday, September 15, 1998, a company with less than 10,000 motor vehicle liability policies in place as of August 21, 1998, that fails to submit the certification required by subsection (H) of this section, shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company 30 or fewer days prior to the reporting date.
2. On Friday, October 2, 1998, a company with less than 10,000 motor vehicle liability policies in place as of August 21, 1998, that fails to submit the certification required by subsection (H) of this section, shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company from the reporting submitted by the company in accordance with subsection (D)(1) on September 15, 1998, through October 1, 1998.
3. On Friday, October 9, 1998, and on every successive Friday, a company with less than 10,000 motor vehicle liability policies in place as of August 21, 1998, that fails to submit the certification required by subsection (H) of this section, shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company 7 or fewer days prior to the reporting date.

E. Reporting Period for a Company with Less than 10,000 Policies that Submits the Required Certification.
1. Through Thursday, July 15, 1999, a company with less than 10,000 policies in place as of August 21, 1998, that submitted the certification required by subsection (H) of this Section, shall submit to the Motor Vehicle Division by the 15th day of each month an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company 30 or fewer days prior to the reporting date.
2. On Friday, July 30, 1999, a company with less than 10,000 policies in place as of August 21, 1998, that submitted the certification required by subsection (H) of this Section, shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company from the date of the reporting submitted by the company in accordance with subsection (E)(1) by July 15, 1999, through July 29, 1999.
3. On Friday, August 6, 1999, and on every successive Friday, a company with less than 10,000 policies in place as of August 21, 1998, that submitted the certification required by subsection (H) of this Section, shall submit to the Motor Vehicle Division an EDI reporting of all cancellations, nonrenewals or new policy issues processed by the company 7 or fewer days prior to the reporting date.

F. No Reportable Activities.

~~B. 3.~~ If there were no reportable activities as of the reporting date, a ~~the~~ company shall submit a declaration of ~~written report declaring~~ such inactivity ~~in lieu of the tape reporting~~.

G. Policies in Place - Form of Reporting.
1. Beginning Friday August 7, 1998, a company with 10,000 or more policies in place shall submit EDI reporting to the Motor Vehicle Division computer-to-computer in accordance with this Section.
2. Beginning Friday, October 9, 1998, a company with less than 10,000 policies in place as of August 21, 1998, that fails to submit the certification required by subsection (H) of this Section, shall submit EDI reporting to the Motor Vehicle Division computer-to-computer in accordance with this Section.
3. Through July 30, 1999, a company with less than 10,000 policies in place as of August 21, 1998, that submits the certification required by subsection (H) of this Section, shall submit EDI reporting to the Motor Vehicle Division computer-to-computer or by cartridge tape in accordance with this Section.
4. Beginning Friday, August 6, 1999, a company with less than 10,000 policies in place as of August 21, 1998, that submits the certification required by subsection (H) of this Section, shall submit EDI reporting to the Motor Vehicle Division computer-to-computer in accordance with this Section.

H. Company Certification of Policies in Place.

For purposes of subsections (E) and (G) of this Section, a company shall submit to the Motor Vehicle Division by Friday, September 11, 1998, a statement signed by an officer or director of the company and acknowledged before a notary public certifying that the company had less than 10,000 motor vehicle liability policies in place as of August 21, 1998.

I.~~C.~~ Noncompliance.
1. Noncompliance with any provision of this rule shall be investigated by the Motor Vehicle Division.
2. The Director of the Motor Vehicle Division shall forward to the Department of Insurance for appropriate action a certified report of the investigation.

APPENDIX A

CARTRIDGE TAPE SPECIFICATIONS AND RECORD LAYOUT

Cartridge Tape Specifications

Record Length 197 Bytes

Blocking Factor 1970 (10 records per block)

Tape Medium — Standard IBM 3480 Cartridge ~~9 Track EBCDIC~~

Tape Density — Standard 3480, Not Compressed ~~1600 BPI only~~

Tape Internal Label — NL (Nonlabeled tapes)

Record Layout

Information Required	Bytes	Field Type	Field Description
VIN	25	Alpha/Numeric	Complete VIN, left justified
Make	5	Alpha	
Year	2	Numeric	
Cancel Date	6	Numeric	MMDDYY (all zeroes for new issues; no future dates for cancellations)
Policy Number	30	Alpha/Numeric	Left Justified
Insurance Code	4	Numeric	
Name (Last, First)	40	Alpha/Numeric	Left Justified
Address	40	Alpha/Numeric	Left Justified
City	25	Alpha	Left Justified
State	2	Alpha	
Zip Code	9	Numeric	Left Justified
Driver's License Number	9	Alpha/Numeric	Left Justified, optional

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

PREAMBLE

1. Sections Affected	Rulemaking Action
R20-2-101	Amend
R20-2-102	Repeal
R20-2-102	Renumber
R20-2-102	Amend
R20-2-103	Repeal
R20-2-103	Renumber
R20-2-103	Amend
R20-2-104	Renumber
R20-2-104	Amend
R20-2-105	Renumber
R20-2-105	Amend
R20-2-106	Renumber
R20-2-106	Amend
R20-2-107	Repeal
R20-2-107	New Section
R20-2-108	Renumber
R20-2-108	New Section
R20-2-109	Renumber
R20-2-109	New Section
R20-2-110	Renumber
R20-2-110	Amend
R20-2-111	Repeal
R20-2-112	Repeal
R20-2-113	Renumber
R20-2-113	Amend
Article 2	Amend
R20-2-201	Repeal
R20-2-201	New Section

R20-2-202	Renumber
R20-2-202	New Section
R20-2-203	Renumber
R20-2-203	Amend
R20-2-204	Renumber
R20-2-204	Amend
Article 3	Amend
R20-2-301	Amend
R20-2-302	Repeal
R20-2-302	New Section
R20-2-303	Repeal
R20-2-304	Repeal
R20-2-305	Repeal
R20-2-306	Repeal
R20-2-307	Repeal
R20-2-308	Repeal
R20-2-309	Repeal
R20-2-310	Repeal
R20-2-311	Repeal
R20-2-312	Repeal
R20-2-313	Repeal
Article 4	Repeal
R20-2-401	Repeal
R20-2-402	Repeal
R20-2-403	Repeal
R20-2-404	Repeal
R20-2-405	Repeal
R20-2-406	Repeal
R20-2-407	Repeal
R20-2-408	Repeal
R20-2-409	Repeal
R20-2-410	Repeal
R20-2-411	Repeal
R20-2-412	Repeal
R20-2-501	Repeal
R20-2-501	New Section
R20-2-502	Renumber
R20-2-502	New Section
R20-2-503	Renumber
R20-2-503	New Section
R20-2-504	Renumber
R20-2-504	Amend
R20-2-505	Renumber
R20-2-505	Amend
R20-2-506	Renumber
R20-2-506	Amend
R20-2-507	Renumber
R20-2-507	Amend
Article 6	Amend
R20-2-601	Amend
R20-2-602	Amend
R20-2-603	Amend
R20-2-604	Amend
Article 8	Repeal
R20-2-801	Repeal
R20-2-802	Repeal
R20-2-803	Repeal
R20-2-804	Repeal
R20-2-805	Repeal
R20-2-806	Repeal
R20-2-807	Repeal
R20-2-809	Repeal
R20-2-810	Repeal
R20-2-811	Repeal
R20-2-812	Repeal

R20-2-901	Repeal
R20-2-901	Renumber
R20-2-901	Amend
R20-2-902	Renumber
R20-2-902	Amend
R20-2-903	Renumber
R20-2-903	Amend
R20-2-904	Renumber
R20-2-904	Amend
R20-2-905	Renumber
R20-2-905	New Section
R20-2-906	Renumber
R20-2-906	New Section
R20-2-907	Renumber
R20-2-907	Amend
R20-2-908	Renumber
R20-2-908	Amend
R20-2-909	Renumber
R20-2-909	Amend
R20-2-910	Renumber
R20-2-910	Amend
R20-2-911	New Section
R20-2-912	Renumber
R20-2-912	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. § 41-2065(A)(4)

   Implementing statutes: A.R.S. §§ 41-1072, et seq., 41-2051, 41-2064, 41-2065, 41-2066, 41-2067, 41-2091, 41-2092, 41-2093, 41-2094, 41-2111, 41-2112, 41-2113, 41-2132, 41-2134, Laws 1996, Ch. 258, § 11, and Laws 1997, Ch. 117, § 3.

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Dennis Ehrhart or Sandy Williams

   Address: 9545 E. Doubletree Ranch Road
   Scottsdale, AZ 85258

   Telephone: (602) 255-5211

   Facsimile: (602) 255-1950

4. **An explanation of the rule, including the agency's reasons for initiating the rule.**

   This proposed rule package is the result of an effort to codify in rule how the Department and the industry operate. These changes will benefit the industry, the public, and the Department by being shorter and easier to understand.

   The circumstances leading to the Department's long-term effort of amending its rules include: (1) the need to have them be more clear, concise and understandable; (2) the fact that requirements for commercial devices, and for packaging, labeling and method of sale are stated in federal publications, eliminating the need for this information to be repeated in rules; (3) legislative changes to require all agencies that issue licenses to enact time-frame rules pertaining to this process; (4) the need to add a rule pertaining to administrative enforcement of vapor recovery systems; (5) clarifying the qualifications and duties of public weighmasters; (6) clarifying the roles of registered service agencies and registered service representatives, and their qualifications and duties; (7) eliminating the used oil rules because the legislature moved this regulatory function to the Arizona Department of Environmental Quality; and (8) amending the gasoline vapor control rules.

   These rules move the definitions from individual articles to Article 1, and some definitions have been revised relating to Department rejection tags and the adoption of the latest NIST/NCWM handbooks. These rules also incorporate references to Handbooks 44, 130, and 133. With respect to public weighing, these rules provide amendments regarding public weighing, weight certificates, and that a seal of authority must be maintained at each scale location.

   With respect to registered service agencies and representatives, these rules clarify the application and qualification process and duties for agencies and representatives.

   These rules clarify the use of an administrative order when a stop-sale/stop-use tag is issued. These rules also include a new rule to incorporate the current practice of placing a stop use tag on a vapor recovery system that is in violation of the Department's statutes or rule, and the use of a warning tag when there is a violation, but the system may remain in use.

   The rules establish time-frames for the administrative and substantive review and decision making regarding all license applications. The rules amend existing language for clarification, repeal obsolete language, add a rule for the administrative hearing process. The rules pertaining to used oil and used oil fuel are being repealed because the Department of Environmental Quality

now administers this program. The rules also incorporate CARB test procedures, amend the application process for an authority to construct, and amend the inspection and testing rules for the gasoline vapor control.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

   For the majority of rule amendments, there is minimal, or no, impact because the rules are being clarified, are incorporating procedures that are already in place, or are being repealed. Many changes codify in rule national standards. This provides for uniformity across state lines, which is a benefit to the regulated industry and consumers. A change involving minimal impact is the repeal of rules setting the weighmaster license fee at $40.00, and the registered service agency fee at $20.00. With the repeal of these rules, these fees will rise to the statutory maximum of $48.00 and $24.00, respectively.

   The new requirement of timeframes for testing gasoline vapor recovery systems may require the operator of a testing site to pay another testing fee if the operator was not prepared for the Department's scheduled testing. Previously, however, the site would have been closed until testing could be completed. Therefore, it benefits the operator to pay another testing fee and stay open until prepared for testing. Costs incurred to operators if testing results are not satisfactory could be high; however, the consumer protection benefit of assuring that all gasoline suppliers have proper vapor recovery systems outweighs this cost. Moreover, this cost cannot accurately be quantified because it could range from the need to replace a minor hose to closing a gas station if there are serious compliance problems.

   Another change that may have a minimal to moderate impact is the requirement that registered service representative must pass a test before being licensed, in that small companies with only one representative cannot operate until the test is passed. However, this impact is overshadowed by the need for only knowledgable representatives to be calibrating weighing devices for the benefit of consumers who purchase goods based on weight. This impact also is outweighed by the anticipated reduction in problems uncovered during Department inspections.

   In summary, there should be only minimal overall impact. Any higher impact is far outweighed by the consumer protection need for regulatory compliance.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Dennis Ehrhart or Sandy Williams

   Address: 9545 E. Doubletree Ranch Road
   Scottsdale, AZ 85258

   Telephoner: (602) 255-5211

   Fax: (602) 255-1950

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

   Date: August 10, 1998

   Time: 9:00 a.m.

   Location: Department of Weights and Measures
   9545 E. Doubletree Ranch Road
   Scottsdale, AZ 85258

   Nature: Public Comment Hearing at which members of the public may appear and make comments regarding the rules and the economic, small business, and consumer impact statement. The Department will accept comments until the close of record, which will not be before August 10, 1998.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

   None.

10. **Incorporations by reference and their location in the rules:**

    R20-2-101: Definition of "Handbook 44" incorporates the United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, 1998 Edition, Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328. Definition of "Handbook 130" incorporates the United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 130, *Uniform Laws and Regulations*, 1998 Edition, Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328. Definition of "Handbook 133" incorporates the United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 133, *Checking the Contents of Packaged Goods*, third edition issued October 1994, including supplements 1, 2, 3 and 4, Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

    R20-2-901 incorporates the following documents:

-Appendix J.5, *Technical Guidance -- Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities*, Vol. II, November 1991 edition (EPA-450/3-91-022b), U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.

-Department's vapor recovery test procedure (TP-WM-1), *Determination of Vapor Piping Connections to Underground Storage Tanks* (Tie-Tank Test), April 1998, Arizona Department of Weights and Measures, 9545 E. Doubletree Ranch Road, Scottsdale, Arizona 85258.

-CARB TP-201.4, *Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

-CARB TP-201.5, *Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

-CARB TP-201.2C, *Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

-CARB TP-201.6, *Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

-CARB TP-201.2B, *Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

11. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section

R20-2-101 Definitions
~~R20-2-102 Material Incorporated by Reference~~
~~R20-2-103 Outside Consultation~~
~~R20-2-105~~ R20-2-102Metrology Laboratory Testing and Calibration Fees
~~R20-2-106~~ R20-2-103Certification Fees
~~R20-2-107 Qualifications for Private Contractors~~
~~R20-2-108~~ R20-2-104Administrative Enforcement Action Regarding Commercial Devices
~~R20-2-109~~ R20-2-105Administrative Enforcement Action Regarding Short-Quantity Commodities
~~R20-2-110~~ R20-2-106Administrative Enforcement Action Regarding Liquid Fuels
R20-2-107 Administrative Enforcement Action Regarding VaporRecovery Systems
~~R20-2-111 Administrative Enforcement Action Regarding Used Oil~~
~~R20-2-112 Forms Used in Enforcement Actions~~
R20-2-108 Time Frames for Licenses, Renewals, and Authorities to Construct
R20-2-109 Administrative Hearing Procedures
~~R20-2-113~~ R20-2-110Motion for Rehearing or Review
~~R20-2-114 Final Decision of the Department~~

ARTICLE 2. ~~WEIGHING AND MEASURING~~ COMMERCIAL DEVICES

R20-2-201 ~~Compliance with Regulations Concerning Devices~~ Licensing Process
R20-2-202 Handbook 44
~~R20-2-202~~ R20-2-203Approval, Installation, and Sale of Devices
~~R20-2-203~~ R20-2-204Livestock and Vehicle Scale Installation

ARTICLE 3. PACKAGING, ~~AND~~ LABELING, AND METHOD OF SALE

R20-2-301 ~~Definitions and Types of Commodities~~ Application
R20-2-302 ~~Declaration of Identity and Responsibility~~ Handbook 130 and Handbook 133
~~R20-2-303 Declaration of Quantity: Consumer Packages~~
~~R20-2-304 Declaration of Quantity: Prescribed Units for Consumer Packages According to Size, Bidimensionality or Count~~
~~R20-2-305 Declaration of Quantity: Types and Units of Measure for Nonconsumer Packages~~
~~R20-2-306 Prominence and Placement of Principal Display Panel and Type Size~~
~~R20-2-307 Labeling Requirements for Specific Types of Consumer Packages~~
~~R20-2-308 Textile Commodities: Prominence and Place of Display of Information~~
~~R20-2-309 Prominence and Placement: Nonconsumer Packages~~
~~R20-2-310 Labeling Polyethylene Commodities~~
~~R20-2-311 Voluntary Open Dating and Pull Dating~~
~~R20-2-312 Unit Pricing~~
~~R20-2-313 Retail Sale Price Representation~~

ARTICLE 4. METHOD OF SALE OF COMMODITIES

~~R20-2-401 Meat, Poultry and Seafood~~
~~R20-2-402 Milk and Milk Products~~
~~R20-2-403 Miscellaneous Food Commodities~~
~~R20-2-404 Lumber~~
~~R20-2-405 Roofing and Roofing Materials~~
~~R20-2-406 Peat and Peat Moss~~
~~R20-2-407 Prefabricated Utility Buildings~~
~~R20-2-408 Fireplace and Stove Wood~~
~~R20-2-409 Hay, Coal and Other Bulk Commodities~~

~~R20-2-410~~ ~~Miscellaneous Non-food Items~~
~~R20-2-411~~ ~~Vehicle Fluids~~
~~R20-2-412~~ ~~Vending Machines~~

ARTICLE 5. PUBLIC WEIGHMASTERS

R20-2-501 ~~Public Weighmaster~~ Qualifications; License and Renewal Application Process
R20-2-502 Duties
R20-2-503 Grounds for Denying License or Renewal; and Disciplinary Action
~~R20-2-502~~ R20-2-504Scales and Vehicle Weighing
~~R20-2-503~~ R20-2-505Weight Certificates
~~R20-2-504~~ R20-2-506Seal of Authority
~~R20-2-505~~ R20-2-507Prohibited Acts

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R20-2-601 ~~Registration of Service Representatives and Institution of Reciprocal Agreements~~ Qualifications; License and Renewal Application Process; and Reciprocal Agreements
R20-2-602 ~~Qualifications and~~ Duties ~~of Registered Service Representatives~~
R20-2-603 ~~Certification of Registration~~Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R20-2-604 Prohibited Acts

ARTICLE 8. USED OIL AND USED OIL FUEL

~~R20-2-801~~ ~~Definitions~~
~~R20-2-802~~ ~~Material Incorporated by Reference~~
~~R20-2-803~~ ~~Fees~~
~~R20-2-804~~ ~~Inspection Procedures~~
~~R20-2-805~~ ~~Sampling Procedures~~
~~R20-2-806~~ ~~Test Methods and Outside Laboratory Test Method Documentation~~
~~R20-2-807~~ ~~Halogen Rebuttal Demonstration Procedure~~
~~R20-2-809~~ ~~Used Oil and Used Oil Fuel Tank and Container Labeling~~
~~R20-2-810~~ ~~Record Availability and Review Requirements~~
~~R20-2-811~~ ~~Burners who Treat Off-specification Used Oil Fuel to On-specification Used Oil Fuel Standards~~
~~R20-2-812~~ ~~Burners Who Burn Self-generated, On-specification, Used Oil Fuel~~

ARTICLE 9. GASOLINE VAPOR CONTROL

~~R20-2-901~~ ~~Definitions~~
~~R20-2-902~~ R20-2-901Material Incorporated by Reference
~~R20-2-903~~ R20-2-902~~Applicability~~ Exemptions
~~R20-2-904~~ R20-2-903Equipment and Installation
~~R20-2-905~~ R20-2-904~~Plan Review and Approval~~ Application Process for Authority to Construct
R20-2-905 Inspection and Testing
R20-2-906 Fees
~~R20-2-906~~ R20-2-907Operation
~~R20-2-907~~ R20-2-908Training and Public Education
~~R20-2-908~~ R20-2-909Record keeping and Reporting
~~R20-2-909~~ R20-2-910Annual Tests
R20-2-911 Compliance Inspections
~~R20-2-910~~ R20-2-912Enforcement

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R20-2-101. Definitions

The following definitions, and definitions in A.R.S. § 41-2051, shall apply to this Chapter, unless the context otherwise requires:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means ~~a stop-use, stop-sale, old, or removal order~~ a DWM-53.
3. ~~"Agent" means an official.~~
3. "Application" means, for purposes of R20-2-108, forms designated as applications and all documents and additional information the Department requires to be submitted with an application.
4 4. "ASTM" means American Society for Testing and Materials.
5. "CARB" means the California Air Resources Board.
6. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
7. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
8. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
9. "Construction commenced" means commencing construction of a gasoline dispensing site at a location where there was not one previously, or that begins a period of construction where all gasoline storage tanks are replaced or at least 75% of the facility's gasoline dispensing equipment is repaired, replaced, or modified.
10. "DWM-53" means a Department form that orders the stop-sale, stop-use, hold, or removal of commodities, devices, vapor recovery systems and components, and liquid fuels.
~~5~~11. "EPA" means the United States Environmental Protection Agency.
12. "Gasoline vapors" means volatile organic compounds in a gaseous state.
~~6~~13. "Handbook 44" means the ~~edition of the~~ United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 44, entitled *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*~~, adopted by the Department in R20-2-102~~ United States Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328 (1998 edition and no later editions or amendments), incorporated by reference herein and on file with the Secretary of State.
14. "Handbook 130" means the United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 130, entitled *Uniform Laws and Regulations*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328 (1998 edition and no later editions or amendments), incorporated by reference herein and on file with the Secretary of State.
15. "Handbook 133" means the United States Department of Commerce Technology Administration National Institute of Standards and Technology Handbook 133, entitled *Checking The Net Contents of Packaged Goods*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328 (third edition issued October 1994, and supplements 1, 2, 3, and 4), incorporated by referenced herein and on file with the Secretary of State.

~~7~~16. "Hold order" means~~, with respect to any weight, measure, packaged commodity, bulk commodity, liquid fuel, or used oil, an administrative order requiring the owner, operator, distributor, manufacturer, licensee, bailee or consignee to keep any weight, measure, commodity, liquid fuel, or used oil under its control and stored at its expense, pending further action~~ a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to keep any commercial device, commodity, or liquid fuel, under its control and stored at its expense, pending further Department action, because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.

~~8. "Hold tag" means the tag used in conjunction with or as a hold, stop-use or stop-sale order and denotes that the weight, measure, commodity, liquid fuel, or used oil to which it applies is ordered held and cannot be disposed of without written authorization from an official of the Department.~~

~~9. "Inch/pound system" means the U.S. customary system of measurement, based on the human foot and the U.S. customary system of avoirdupois weight, based on a pound of 16 ounces and an ounce of 16 drams.~~

17. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.

18. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.

19. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.

20. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.

~~10. "National Type Evaluation Program" means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, and the states having participating laboratories.~~

21. "NIST" means the National Institute of Standards and Technology.

22. "Off sale" means that a commodity has been removed from commercial sale.

~~11. "Official" means the director, deputy director, supervisory staff, or inspectors of the Department.~~

~~12. "Off-sale order" means a stop-sale, hold or removal order which removes from commercial sale any commodity which does not meet standards as set forth in A.R.S. Title 41, Chapter 15, or A.A.C. Title 4, Chapter 2.~~

23. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.

~~13~~24. "Out-of-service tag" means ~~the~~ a red rejection tag ~~used in conjunction with or as a stop-use order and denotes that the device to which it applies may not be used commercially~~ that signifies that a commercial device does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules, and the owner or operator shall not use the device commercially until repaired.

~~14. "Participating laboratory" means any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the Certification of Capability of State Measurement Laboratories, to conduct a type evaluation under the National Type Evaluation Program.~~

25. "Placed in service" means the certification by a registered service agency or representative that a commercial device may be used, unless the Department orders otherwise.

26. "Placed-In-Service Report" means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.

27. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.

28. "Registered Service Representative" means a registered serviceman.

~~15~~29. "Removal order" means ~~with respect to any weight, measure, packaged commodity, bulk commodity, liquid fuel, or used oil, an administrative order requiring the respective item or commodity to be removed from use or sale, or availability for use or sale, and to be disposed of in accordance with Department authorization~~ a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to remove from use or sale, and dispose of, a commercial device, commodity, liquid fuel, or vapor recovery component because it does not meet there quirements of A.R.S. Title 41, Chapter 15, or these rules.

~~16. "Restricted-use tag" means the yellow rejection tag used to notify the public the device to which it applies is not in total compliance with technical requirements of A.R.S. Title 41, Chapter 15, A.A.C. Title 4, Chapter 2, or Handbook 44, and shall not remain in commercial use without being repaired or otherwise corrected within the time allowed.~~

30. "Retail" means the sale of a commodity to a consumer.

31. "Seal of authority" means a stamp or press of the Department's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.

~~17~~32. "Seizure" means ~~the~~ taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, ~~or a weighing or measuring~~ commercial device, or component of a device by ~~an~~ the Department ~~official of the Department~~.

~~18~~33. "Stop-sale order" means~~, with respect to any packaged commodity, bulk commodity, liquid fuel, or used oil, an administrative order to stop the sale of such the commodity, fuel or used oil~~ a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to stop selling a commodity or liquid fuel, because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.

~~19~~34. "Stop-sale, stop-use tag" means ~~the tag used in conjunction with an administrative order which, when affixed, seals or closes the equipment, tank, or container and prohibits the sale or use of the product to which it applies~~ a blue tag that signifies that a owner or operator shall not sell or use the commercial device, including a vapor recovery system component, commodity, or liquid fuel, because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.

~~20~~35. "Stop-use order" means ~~with respect to any weight, measure, liquid fuel, or used oil, an administrative order prohibiting use until such time as the weight, measure, fuel or used oil can be made suitable for use~~ a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to prohibit the use of any commercial device, commodity, liquid fuel, or vapor recovery system, including any of its components, until the weight, measure, fuel, or vapor recovery system complies with the requirements of A.R.S. Title 41, Chapter 15 and these rules.

~~21~~. ~~"Sufficient application" means a completed application for a device license, or an annual renewal of a device license, accompanied by the appropriate fees, including penalty if applicable.~~

36. "Underground storage tank" means a tank as described in A.R.S. § 49-1001(18).

37. "Unit" means a quantity adopted as a standard of measurement.

~~22~~38. "Unlicensed device tag" means ~~the~~ an orange tag ~~used in conjunction with or as a stop-use order and denotes that the instrument or device to which it applies is unlicensed and is not to be used commercially~~ that signifies that an owner or operator shall not use the commercial device until all licensing requirements of A.R.S. Title 41, Chapter 15, and these rules are met.

39. "Vapor-tight" means that a stage II vapor recovery system can retain at least 95 percent of the gasoline vapors.

40. "Warning tag" means a yellow tag that signifies a commercial device does not comply with the requirements of A.R.S. Title 41, Chapter 15, or these rules, and may only be used within the period specified on the tag for repair, but not thereafter unless the device is in compliance with A.R.S. Title 41, Chapter 15 and these rules.

41. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Department, that certifies the accuracy of the weight of the commodity measured.

~~R20-2-102~~ ~~Material incorporated by reference~~

~~As required by A.R.S. § 41-2064, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices shall be pursuant to the 1992 edition of NIST Handbook 44, subtitled *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices* as adopted by the 76th National Conference on Weights and Measures, 1991, and published by the United States Department of Commerce, National Institute of Standards and Technology, formerly the National Bureau of Standards, which is incorporated herein by reference and on file with the Office of the Secretary of State. This rule does not include any later amendments or editions of Handbook 44. Copies of Handbook 44 are available from the Department and from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~R20-2-105~~ R20-2-102 Metrology Laboratory Testing and Calibration Fees

A. ~~The following shall govern the fees to be charged for tests or calibrations~~ The Department shall charge $40.00 an hour, with a minimum charge of $24.00, for work performed by the Department's Metrology Laboratory.

~~1. A fee of $40 an hour shall be paid to the Department for tests or calibrations performed by the Metrology Laboratory.~~

~~2. A minimum fee of $24 shall be paid to the Department for any test or calibration performed by the Metrology Laboratory.~~

~~3~~B. ~~Tests or calibrations conducted outside the Metrology Laboratory shall be at the rate set forth in paragraphs (1) and (2) of this Section. Travel~~ In addition to the charges in subsection (A), the Department shall charge for travel and per diem ~~shall be charged~~ at the rates established ~~pursuant to~~ by A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

~~R20-2-103 Outside Consultation~~

~~A. Any person who desires assistance and consultation from the Department outside of the normal duties of an official shall make the request in writing and shall agree to reimburse the Department for the official's time and expense.~~

~~B. Such assistance and consultation shall be at the discretion of the Director, and the amount of such reimbursement shall be determined by the Director.~~

~~R20-2-106~~ R20-2-103 Certification Fees

The fee for testing and certification of noncommercial devices and portable batch plant devices shall be the same as the fee ~~as prescribed~~ for licensing ~~of like~~ commercial devices ~~as set forth~~ listed in A.R.S. § 41-2092.

~~R20-2-108~~ R20-2-104 Administrative Enforcement Action Regarding Commercial Devices

A. Warning tag.

1. ~~If an official determines~~ The Department shall attach a warning tag to a commercial device if the device:
   a. ~~does~~ Does not comply with the ~~standards as required by~~ requirements of A.R.S. ~~§ 41-2062, the specifications, tolerances, and other technical requirements as required by A.R.S. § 41-2064 and~~ Title 41, Chapter 15, Handbook 44, or ~~A.A.C. R20-2-201 through R20-2-203~~ these rules; and ~~it is~~
   b. Use of the device may harm ~~not to the detriment of~~ the ~~buyer~~, public ~~the official shall attach a yellow restricted use tag~~.

~~1~~.2. The tag shall be affixed to the device ~~in such a manner as to be seen by the~~ in public view.

~~2~~.3. The tag shall contain the following information:
   a. A ~~warning to the public~~ notice that the device has been examined by the Department and has failed to comply with ~~the standards of~~ A.R.S. Title 41, Chapter 15, Handbook 44, or these rules ~~.~~ ;
   b. The name of the business, ~~the~~ location, and fee-code~~.~~;
   c. A notice that it is unlawful to remove the tag~~.~~;
   d. The date~~.~~;
   e. A notice of the time allowed for repair~~.~~; and
   f. A notice that if the device is not repaired within the time allowed ~~for repair~~, it shall be placed out of service by the Department.

~~3~~.4. A person shall not remove ~~A restricted use~~ a warning tag ~~shall not be removed from a device~~ without authorization from the Department.

B. Out of service tag.

1. ~~If an official determines~~ The Department shall attach an out of service tag to a commercial device if the device:
   a. ~~does~~ Does not comply with ~~the standards as required by~~ A.R.S. ~~§ 41-2062, the specifications, tolerances, and other technical requirements as required by A.R.S. § 41-2064~~ Title 41, Chapter 15, Handbook 44, or ~~A.A.C. R20-2-201 through R20-2-203~~, these rules; and

b. ~~it is to the detriment of the buyer,~~ Use of the device may harm the public or ~~if~~ the device has not been repaired as required in subsection (A) ~~above, the official shall attach a red out-of-service tag~~.

~~1.~~2. The tag shall be affixed to the device ~~in such a manner as to be seen by the~~ in public view.

~~2.~~3. The tag shall contain the following information:

a. A notice ~~to the public~~ that the device has been examined by the Department and has failed to comply with ~~the standards of~~ A.R.S. Title 41, Chapter 15, Handbook 44, or these rules ~~.~~ ;

b. A notice ~~to the public~~ that a person shall not use the device ~~is not to be used~~ until repaired~~.~~;

c. The name of the business, location, and fee code~~.~~;

d. A notice that it is unlawful to remove the tag~~.~~;

e. The date~~.~~; and

f. A notice that failure to repair the device may subject it to seizure.

~~3.~~4. ~~An~~ A person shall not remove an out-of-service tag ~~shall not be removed from a device~~ without authorization ~~of~~ from the Department.

C. Unlicensed device tag.

1. ~~If an official determines~~ The Department shall attach an unlicensed device tag to a commercial device if a valid license has not been procured for ~~a commercial~~ the device~~, the official shall attach an orange unlicensed device tag to such device pursuant to A.R.S. § 41-2111(A)~~.

~~1.~~2. The tag shall be affixed to the device ~~in such a manner as to be seen by the~~ in public view.

~~2.~~3. The tag shall contain the following information:

a. A notice that the device is unlicensed~~.~~, and

b. A notice that a person shall not use the device ~~is not to be used commercially~~ for commercial purposes.

~~3.~~4. ~~An~~ A person shall not remove an unlicensed device tag ~~shall not be removed from a device~~ without authorization ~~of~~ from the Department.

~~R20-2-109~~ R20-2-105Administrative Enforcement Action Regarding Short-Quantity Commodities

A. ~~If an official finds that a commodity~~ The Department shall order the hold, stop-sale, stop-use, or removal of any commodity that is short of the quantity stated or improperly labeled~~, the official shall order the entire lot off sale~~ by ~~issuance of~~ issuing a DWM-53 ~~stop-sale, stop-use, hold, remove order to the owner or consignee~~ to the seller.

B. A ~~hold~~ stop-sale or stop-use tag may be affixed by the ~~official~~ Department to those commodities ~~ordered off sale~~ for which the Department has issued a DWM-53.

1. The ~~hold~~ tag shall be displayed ~~in such a manner as to be seen by the~~ in public view.

2. The tag shall contain the following information:

a. A notice ~~that the commodity has been ordered off sale.~~ of the order;

b. A notice that a person shall not remove the tag ~~shall not be removed~~ or dispose of the commodity ~~disposed of~~ without authorization from ~~a~~ the Department ~~official.~~;

c. ~~Location~~ The location and identification of the commodity~~.~~;

d. ~~Violation~~ A description of the violation~~.~~;

e. ~~Name~~ The name of the ~~Inspector.~~ Department employee who affixed the tag; and

f. The date.

C. ~~Any commodity which has been ordered off sale shall not be exposed for sale except under the following circumstances~~ An owner, wholesaler, or retailer shall not sell any commodity for which a DWM-53 has been issued without the Department's written authorization to:

1. ~~The owner, wholesaler or retailer may be authorized to separate those~~ Separate the goods ~~which~~ that are at or more than their represented quantity from the ~~off-sale~~ tagged lot and return those ~~qualified~~ goods for sale.

2. ~~The owner, wholesaler or retailer may be authorized to sell~~ Sell the commodity provided it can be brought up to the represented quantity.

3. ~~Short quantity items may be relabeled at their quantity and sold~~ Relabel the commodity at its actual quantity.

4. ~~Short quantity items may be sold with notices~~ Place a notice on the commodity of the violation and adjust the price accordingly ~~adjustment when authorized by a Department official~~.

~~5.~~D. ~~A~~ The Department ~~official~~ may provide written ~~approve~~ authorization of ~~any~~ the disposition of ~~an off-sale~~ a tagged commodity provided ~~the disposition is~~ it does not ~~in~~ conflict with A.R.S. Title 41, Chapter 15, or ~~A.A.C. Title 4, Chapter 2~~ these rules.

~~6.~~E. Any disposition authorized by ~~a~~ the Department ~~official~~ shall be recorded on the DWM-53 ~~stop-sale, stop-use, hold, remove order form~~.

~~R20-2-110~~ R20-2-106Administrative Enforcement Action Regarding Liquid Fuels

A. If ~~an official~~ the Department finds that a liquid fuel fails to meet the requirements ~~as set forth in~~ of A.R.S. Title 41, Chapter 15, ~~and~~ or ~~A.A.C. Title 4, Chapter 2~~ these rules, the ~~official~~ Department shall order the hold, stop-sale, or stop-use of the liquid fuel ~~off sale by issuance of~~ by issuing a DWM-53 ~~stop-sale, stop-use, hold, or remove order to the owner or consignee~~.

B. A stop-sale, stop-use tag may be affixed by the ~~official~~ Department to a storage ~~devices~~ vessel containing the liquid fuel ~~ordered off sale~~.

1. The ~~stop-sale, stop-use~~ Department ~~tag~~ shall ~~be attached~~ attach the tag to the storage tank fill cap and dispenser where the liquid fuel is stored and dispensed.

2. The ~~stop-sale, stop-use~~ tag shall contain the following information:

a. A notice that the liquid fuel has been prohibited from sale or use~~.~~;

b. A notice that the liquid fuel is not to be disposed of without written authorization from ~~a~~ the Department ~~official.~~;

c. ~~Location~~ The location and identification of the liquid fuel~~.~~;

d. Identification of the liquid fuel.

~~e~~d. ~~Brand~~ The brand name of the fuel~~.~~;

~~f~~e. ~~Number~~ The number of containers~~.~~;

g. Marked contents.

h. Other identification.

~~if~~. ~~Violation~~ A description of the violation~~.~~;

~~j~~g. ~~Name~~ The name of ~~official.~~ the Department employee who affixed the tag; and

~~k~~h. ~~Date~~ The date.

C. ~~Any~~ A person shall not sell or use liquid fuel ~~which~~ that has been ~~ordered off sale~~ issued a DWM-53 ~~shall not be exposed for sale~~ except under the following circumstances:

1. The Department may authorize the owner, wholesaler, or retailer ~~may be authorized~~ to sell the liquid fuel provided it can be brought up to:

a. ~~It can be brought up to represented~~ Represented quality~~.~~ and

b. ~~It can be brought up to specifications set forth~~ Specifications in A.R.S. Title 41, Chapter 15, ~~or A.A.C. Title 4, Chapter 2~~ and these rules.

2. ~~A~~ The Department ~~official~~ may provide written authorization ~~approve~~ of ~~any~~ the disposition of ~~an off-sale commodity~~ liquid fuel issued a DWM-53 provided the disposition ~~is~~ does not ~~in~~ conflict with A.R.S. Title 41, Chapter 15, or ~~A.A.C. Title 4, Chapter 2~~ these rules.

~~3. Any disposition authorized by a Department official shall be recorded on the DWM-53 stop-sale, stop-use, hold, remove order form.~~

~~D. If an official finds that the liquid fuel cannot be brought up to represented quality or meet specifications for a particular area, pursuant to A.R.S. Title 41, Chapter 15, or A.A.C. Title 4, Chapter 2, the official shall order the liquid fuel removed by issuance of a DWM-53 stop-sale, stop-use, hold, remove order to the owner or consignee.~~ The Department shall record the disposition on the DWM-53. ~~A~~ The Department ~~official~~ may authorize ~~the~~ liquid fuel for which a DWM-53 has been issued to be removed:

1. To a facility capable of reblending or refining~~.~~,
2. To another area within the state if specifications of that area can be met~~.~~, or
3. Outside the state.

~~4. Any disposition authorized by a the Department official shall be recorded on the DWM-53 stop-sale, stop-use, hold, remove order form.~~

~~**R20-2-107 Qualifications for Private Contractors**~~

~~A. A person who provides petroleum products testing services for the Department pursuant to A.R.S. § 41-2065(E) shall meet all the following minimum qualifications and requirements and in addition shall comply with all the testing and sampling requirements established in R20-2-701, R20-2-716, R20-2-717, R20-2-801, R20-2-804, and R20-2-805:~~

~~1. Shall have been continuous operation for one year prior to the submission of a proposal in the business of providing chemical and physical analyses of petroleum products, including liquid, motor, and used oil fuels;~~

~~2. Shall have a testing program manager responsible for supervising petroleum products testing conducted. The testing program manager shall possess a minimum of a Bachelor's degree in chemistry, petroleum chemistry, or petroleum engineering. In addition, the testing program manager shall have two years' experience in the analysis of petroleum products. Other personnel conducting tests must have either a Bachelor's degree in chemistry, petroleum chemistry, or petroleum engineering or one year's experience in the analysis of petroleum products;~~

~~3. Shall have a quality assurance and quality control system/program that practices, incorporates, and is in accordance with guidelines established in EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA, IB, IC, II: Laboratory Manual, Physical/Chemical Methods, and no further additions or amendments, incorporated herein by reference and on file with the Secretary of State's Office and the Department;~~

~~4. Shall have current membership in a regional petroleum exchange group or in the American Society for Testing and Materials National Exchange Group (NEG), with active participation in group forums and round robin testing;~~

~~5. Shall comply with all federal, state, and local certification and licensing requirements for commercial, environmental, and petroleum testing laboratories;~~

~~6. Shall comply with all federal, state, and local building codes to conduct commercial, environmental, or petroleum testing;~~

~~7. Shall have testing equipment necessary to conduct petroleum products testing in accordance with test methods and sampling procedures established and required in R20-2-702, R20-2-716, R20-2-717, R20-2-802, R20-2-805, and R20-2-806.~~

~~B. A person desiring to submit offers to provide testing services for the Department pursuant to A.R.S. § 41-2065(E) shall submit the following documentation to the Department:~~

~~1. The names, qualification, and experience background of all personnel directly involved in conducting those duties called for on the contract solicitation. Such qualifications and experience shall be directly related to the job duties involved in meeting the requirements of the proposed contract;~~

~~2. A description of all appropriate technical equipment that will be utilized in the performance of the proposed contract. The description shall include the name, model, date of manufacture, applicable date of last certification, and name of last certifier;~~

~~3. The names and addresses of clients for whom services have been performed similar to those called for in the proposed contract. Services must have been rendered during the 12 months prior to the proposal;~~

~~4. A statement attesting that the firm and those personnel who will be involved in the performance of the proposed contract have a working knowledge of the requirements of the applicable Arizona Revised Statutes and rules adopted by the Department;~~

~~5. Evidence of all appropriate licenses held by the person which are required to perform the service called for in the proposed contract.~~

R20-2-107 Administrative Enforcement Action Regarding Vapor Recovery Systems

A. Stop-Sale, Stop-Use Tag

1. If the Department finds that a vapor recovery system or any component fails to meet the requirements set forth in A.R.S. Title 41, Chapter 15, or these rules, the Department shall order the stop-sale, stop-use of the vapor recovery system by issuing a DWM-53.
2. A stop-sale, stop-use tag may be affixed by the Department to a vapor recovery system.
   a. The Department shall attach the tag to the non-compliant component, in public view.
   b. The tag shall contain the following information:
      i. A notice that the vapor recovery system has been prohibited from use.
      ii. The location and identification of the vapor recovery system. iii. A notice that it is unlawful to remove the tag without Department authorization.
      iv. A description of the violation.
      iv. The name of the Department employee who affixed the tag.
      v. The date.
3. A person shall not use a vapor recovery system issued a DWM-53 to dispense liquid fuel for commercial purposes.

B. Warning Tag.

1. The Department shall attach a warning tag to a vapor recovery system or any of its components if the system or components:

a. Do not comply with the requirements of A.R.S. Title 41, Chapter 15, CARB Executive Orders that apply to the system, or these rules; and
b. The use of the vapor recovery system will not harm the public.

2. The Department shall affix the tag to the non-compliant component, in public view.
3. The tag shall contain the following information:
a. Notice that the Department has examined the system and the system fails to comply with Title 41, Chapter 15, CARB Executive Orders that apply to the system, or these rules;
b. The name of the business and location;
c. A notice that it is unlawful to remove the tag without Department authorization;
d. The date;
e. A notice of the time allowed for the repair; and
f. A notice that if the system is not repaired within the required time, the Department shall issue a stop-sale, stop-use tag.

R20-2-108 Time Frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the Department, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.
B. For each type of license, renewal, or authority issued by the Department, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Department receives an application.
1. If the application is not administratively complete, the Department shall send a deficiency notice to the applicant.
a. The deficiency notice shall state each deficiency and the information needed to complete the application.
b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Department the missing information specified in the deficiency notice. The time-frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the missing information.
c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Department shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
2. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.
C. For each type of license, renewal, or authority issued by the Department, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Department sends written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Department may make 1 comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Department to finish the substantive review is suspended from the date the Department mails the request until the Department receives the information.
2. The Department shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1. An applicant who desires to reapply shall begin the application process anew.
3. The Department shall issue a written notice of denial of license, renewal, or authority if the Department determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title 41, Chapter 15, or this Chapter for a license, renewal, or authority to construct.
a. The notice of denial shall include:
i. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
ii. The name and telephone number of a Department employee who can answer questions regarding the application process.
4. If the applicant meets all of the substantive criteria required by A.R.S. Title 41, Chapter 15, or this Chapter for a license, renewal, or authority to construct the Department shall issue the license, renewal, or authority to construct to the applicant.
D. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the date of mailing.
E. An applicant whose license, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.

R20-2-109 Administrative Hearing Procedures

Title 41, Chapter 6, Articles 6 and 10 apply to the Department's hearings.

~~R20-2-113~~ R20-2-110 Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the ~~director~~ Department who is aggrieved by a decision rendered in ~~such~~ the case may file with the ~~director~~ Department, ~~not later than ten days after service of the decision,~~ a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds ~~therefor~~ for the motion.
B. A motion for rehearing or review ~~under this rule~~ may be amended at any time before it is ruled upon by the ~~director~~ Department. A response may be filed within ~~ten~~ 10 days after service of ~~such~~ the motion or amended motion by any other party ~~or the Attorney General~~. The ~~director~~ Department may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following ~~causes~~ reasons materially affecting the moving party's rights or ability to receive a fair hearing:

1. ~~Irregularity in the proceedings before the director or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing~~ Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Department.
2. Misconduct of the ~~director~~ Department, ~~his employees or his hearing officer~~ the administrative law judge, or the prevailing party.
3. Accident or surprise ~~which~~ that could not have been prevented by ordinary prudence.
4. Newly discovered material evidence ~~which~~ that could not ~~with reasonable diligence~~ have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
7. That the decision is not justified by the evidence or is contrary to law.

D. The ~~director~~ Department may affirm or modify ~~the~~ its decision, or grant a rehearing or review ~~as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C)~~. After giving the parties or their counsel notice and an opportunity to be heard, the Department may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify ~~with particularity~~ the ~~ground or~~ grounds on which the rehearing or review is granted~~, and~~. ~~the~~ The rehearing or review shall cover only those matters so specified.

E. The ~~director~~ Department, within the time for filing a motion for rehearing or review under this rule, may ~~on his own initiative~~ order a rehearing or review ~~of his decision~~ for any ~~reason for which he might have granted a rehearing on motion of a party~~ of the reasons set forth in subsection (C)~~.~~ ~~After~~ after giving the parties notice and an opportunity to be heard ~~on the matter, the director may grant a motion for rehearing, timely served, for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor~~.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party ~~or the Attorney General may within ten~~ shall have 10 days ~~after such~~ from the date of service to serve opposing affidavits. The Department may extend the period to respond for good cause shown up to 20 days, or by written stipulation of the parties. If the Department permits reply affidavits, they shall be served within 5 days.

G. If ~~in a particular decision~~ the ~~director~~ Department makes specific findings that the immediate effectiveness of ~~such~~ a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Department may issue the decision ~~may be issued~~ as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the ~~director's~~ Department's final decision.

~~**R20-2-111 Administrative Enforcement Action Regarding Used Oil**~~

~~A. If an official finds that used oil or used oil fuel is not in compliance with A.R.S. Title 41, Chapter 15; Title 49, Chapter 4, Article 7; or this Chapter, the official shall issue to the generator, transporter, marketer, or burner a DWM-53 stop sale, stop use, hold, or remove order, pursuant to A.R.S. §§ 41-2065(F) and 41-2066(A)(2).~~

~~B. When a DWM-53 stop sale, stop use, hold, or remove order is issued, a stop sale, stop use tag may be affixed by the official Department to the device, tank, container, vehicle, or storage facility involved.~~

~~1. The stop sale, stop use tag shall be attached to the device, tank, container, vehicle, or storage facility in such a manner as to be seen by the public or any individual on the premises near the used oil product or equipment.~~

~~2. The stop sale, stop use tag shall contain the following information:~~

~~a. A notice the product has been prohibited from sale or use.~~

~~b. A notice the product is not to be disposed of without authorization from a Department official.~~

~~c. Location of the product.~~

~~d. Identification of the product.~~

~~e. Brand name.~~

~~f. Number of containers.~~

~~g. Marked contents.~~

~~h. Other identification.~~

~~i. Violation.~~

~~j. Name of official.~~

~~k. Date.~~

~~C. The ADEQ director or designee shall be notified pursuant to A.R.S. § 41-2066 by the Department, through transmittal of the DWM-53 stop sale, stop use, hold, or remove order, and inspection and test reports, that a generator, transporter, marketer, or burner of used oil has been issued an administrative order.~~

~~D. Any used oil generator, transporter, marketer, or burner who has been issued an administrative order pursuant to this Section shall not expose the used oil product for sale or use until the product is released for sale, use, or removal by the Department and shall:~~

~~1. During normal working hours and within three working days of issuance of the administrative order, notify the Department and ADEQ of the method that will be utilized to correct the violation. If verbal notice is given, written notice shall be delivered to the Department within five working days of issuance of the administrative order.~~

~~2. After method of correction of violation has been approved, schedule an appointment with a Department official to return to the location where the used oil is being held. If the violation is corrected, the administrative order shall be lifted and the stop sale, stop use tag removed.~~

~~E. Any person who has been issued an administrative order pursuant to this Section may request an informal review of such order.~~

~~1. The request shall be made in writing to the Director within ten working days of the date of the order.~~

~~2. Notice of time and place of informal review shall be mailed to requestor at least five working days prior to the informal review.~~

~~3. Disposition of informal review shall be mailed to requestor within ten working days after conclusion of informal review.~~

~~F. A request for a hearing to lift an administrative order shall be made in writing to the Director within 30 days of the date of the order or disposition of the informal review.~~

~~**R20-2-112 Forms Used in Enforcement Actions**~~

~~The DWM-53 stop-sale, stop-use, hold, remove order form shall be used by the Department when prohibiting commodities or devices from sale or use. The DWM-53 form shall be as follows:~~

R20-2-114 Final Decision of the Department

~~A. If a motion for rehearing is denied, the final decision denying the motion for rehearing shall be sent within 15 days after the denial to all parties.~~

~~B. If the motion for rehearing was granted, a final decision shall be made and shall be sent within 15 days after the conclusion of the rehearing to all parties.~~

~~C. A final decision of the Department shall contain:~~

~~1. Findings of facts and conclusions of law, separately stated, and the decision; and~~

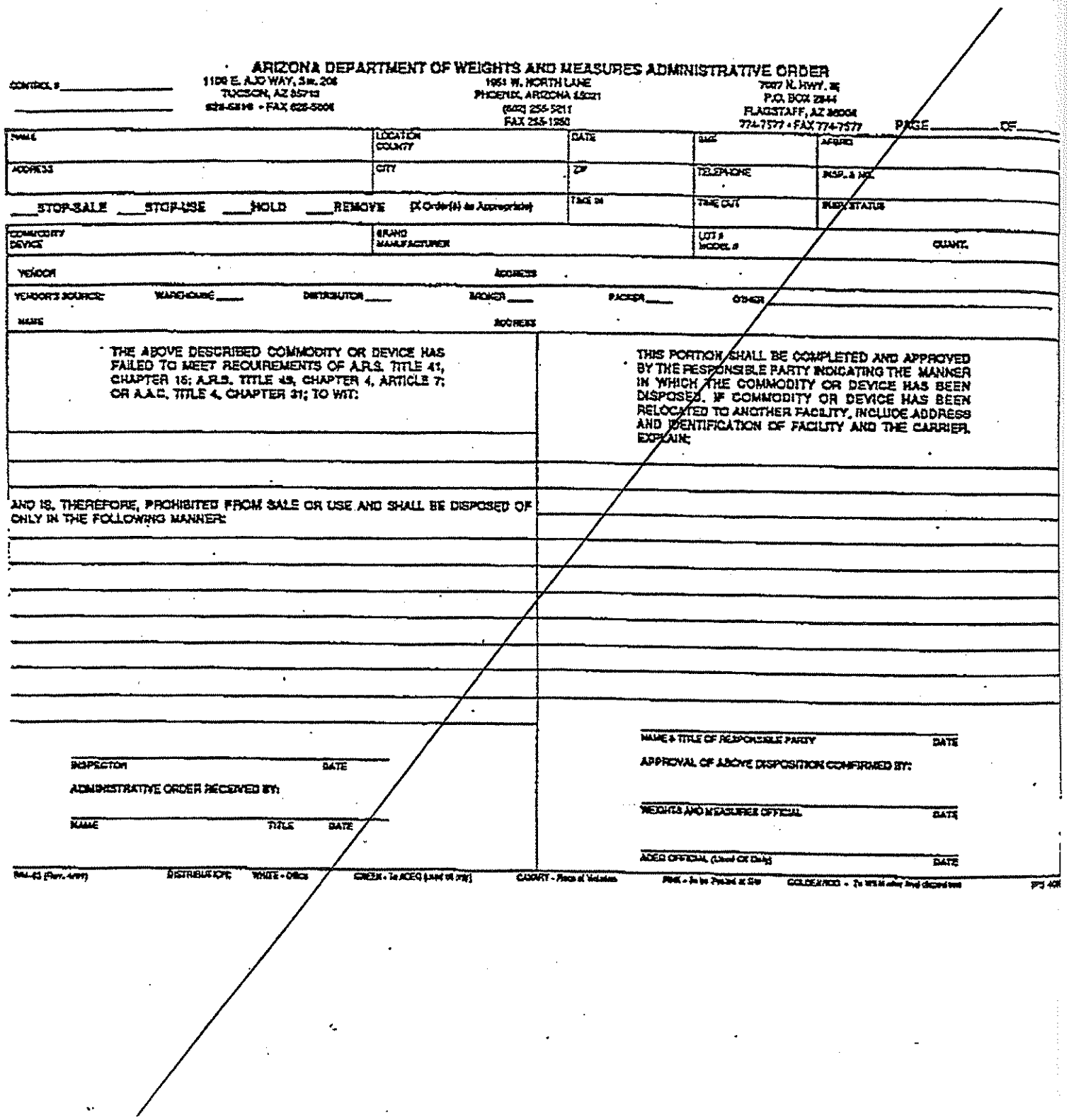
~~2. A paragraph substantially as follows:~~

~~"This is the final decision of the Department of Weights and Measures. This decision may be reviewed by the Superior Court by the filing of an action to review pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq., within 35 days from the date when a copy of this final decision is served upon the party affected pursuant to A.R.S. § 12-904."~~

D. The final decision of the Department is the "administrative decision" of the Department as defined in A.R.S. § 12-901(2).

Table 1. Time Frames
(in days)

Type of License	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Commercial Device R20-2-201	10	20	30	20	40
Public Weighmaster R20-2-501	10	20	30	20	40
Registered Service Agency/Representative R20-2-601	10	20	30	20	40
Authority to Construct R20-2-904	10	20	30	20	40



ARIZONA DEPARTMENT OF WEIGHTS AND MEASURES ADMINISTRATIVE ORDER

CONTROL # _____

1110 E. AJO WAY, Ste. 208
TUCSON, AZ 85713
628-6346 • FAX 628-5008

1951 W. NORTH LANE
PHOENIX, ARIZONA 85021
(602) 255-5211
FAX 255-1950

7007 N. HWY. 89
P.O. BOX 2844
FLAGSTAFF, AZ 86004
774-7577 • FAX 774-7577

PAGE _____ OF _____

NAME	LOCATION COUNTY	DATE	TIME	AFB/RD
ADDRESS	CITY	ZIP	TELEPHONE	INSP. & NO.
___STOP-SALE ___STOP-USE ___HOLD ___REMOVE (X Order(s) as Appropriate)		TIME IN	TIME OUT	INSP. STATUS
COMMODITY DEVICE	BRAND MANUFACTURER		LOT # MODEL #	QUANT.

VENDOR _____ ADDRESS _____

VENDOR'S SOURCE: WAREHOUSE ____ DISTRIBUTOR ____ BROKER ____ PACKER ____ OTHER _____

NAME _____ ADDRESS _____

THE ABOVE DESCRIBED COMMODITY OR DEVICE HAS FAILED TO MEET REQUIREMENTS OF A.R.S. TITLE 41, CHAPTER 15; A.R.S. TITLE 49, CHAPTER 4, ARTICLE 7; OR A.A.C. TITLE 4, CHAPTER 31; TO WIT:

AND IS, THEREFORE, PROHIBITED FROM SALE OR USE AND SHALL BE DISPOSED OF ONLY IN THE FOLLOWING MANNER:

THIS PORTION SHALL BE COMPLETED AND APPROVED BY THE RESPONSIBLE PARTY INDICATING THE MANNER IN WHICH THE COMMODITY OR DEVICE HAS BEEN DISPOSED. IF COMMODITY OR DEVICE HAS BEEN RELOCATED TO ANOTHER FACILITY, INCLUDE ADDRESS AND IDENTIFICATION OF FACILITY AND THE CARRIER. EXPLAIN:

INSPECTOR _____ DATE _____

ADMINISTRATIVE ORDER RECEIVED BY:

NAME _____ TITLE _____ DATE _____

NAME & TITLE OF RESPONSIBLE PARTY _____ DATE _____

APPROVAL OF ABOVE DISPOSITION CONFIRMED BY:

WEIGHTS AND MEASURES OFFICIAL _____ DATE _____

AGED OFFICIAL (Chief Of Duty) _____ DATE _____

WM-43 (Rev. 4/97) DISTRIBUTION: WHITE - Office GREEN - To AGED (Left on Site) CANARY - Place of Violation PINK - To be Posted at Site GOLDENROD - To WM at other Prod Disposal Site

ARTICLE 2 ~~WEIGHING AND MEASURING~~ COMMERCIAL DEVICES

~~**R20-2-201 Compliance with Regulations Concerning Devices**~~

~~A. Application. All commercial weighing, and measuring, metering and counting devices installed after the effective date of A.R.S. § 41-2064 shall be in compliance with those requirements adopted by the National Conference on Weights and Measures from the National Bureau of Standards Handbook 44. Weighing, measuring, metering and counting devices in lawful commercial use prior to the effective date of A.R.S. § 41-2064 may be continued in use until such time as determined by the Director or his agent.~~

~~B. Exemption. Livestock scales, installed before the effective date of A.R.S. § 41-2064, are exempted from this regulation.~~

R20-2-201 Licensing Process

A. An owner of a device may apply for a license on a form supplied by the Department.
   1. The application form may require:
      a. The applicant's name, address, and telephone number;
      b. The name, address, and telephone number of the location where the device will be operated;
      c. The device description; and
      d. The applicant's signature.

R20-2-202 Handbook 44

As required by A.R.S. § 41-2064, all commercial devices shall comply with the specifications, tolerances, and other technical requirements set forth in Handbook 44, except as otherwise stated in these rules.

~~R20-2-202~~ R20-2-203Approval, Installation and Sale of Devices

A. All commercial ~~weighing, measuring, metering and counting~~ devices installed after ~~the effective date of A.R.S. § 41-2064~~ January 1, 1975 shall be ~~type-approved~~ prototype-approved by the NIST Type Evaluation Program. ~~Prototype approval from the National Bureau of Standards may be submitted in lieu of California Division of Measurement Standards approval.~~ All devices installed before January 1, 1975 are exempt from NIST Type Evaluation Program prototype approval.

B. ~~Any~~ The owner of a device installed for commercial purposes ~~only~~ shall ~~be reported by the licensee~~ report its use to the Department within ~~5~~ 7 days of ~~the event~~ its use.

C. ~~Any weighing, measuring, metering and counting~~ The seller of any device ~~which~~ that has been ~~repaired or reconditioned~~ remanufactured for the purpose of commercial sale shall not ~~be sold~~ sell the device unless ~~so marked by the seller~~ it is marked as having been remanufactured.

~~R20-2-203~~ R20-2-204Livestock and Vehicle Scale Installation

A. ~~Definition. "~~Portable livestock and portable vehicle scales~~" mean devices which are~~ shall be designed to be readily ~~moved~~ moveable from one location to another.

B. ~~Application~~
   ~~1.~~ Portable scales and low-profile electronic scales shall ~~have provision for adequate access~~ be accessible for proper maintenance.

~~2~~C. Notwithstanding ~~any provision in National Bureau of Standards~~ Handbook 44 ~~(as adopted by the National Conference on Weights and Measures) to the contrary~~, vehicle and livestock scales installed above ground shall have two feet minimum clearance from the bottom of the lowest platform support girder~~, that is lowest in platform support,~~ to the ground.

~~3~~D. Notwithstanding ~~any provision in National Bureau of Standards~~ Handbook 44 ~~(as adopted by the National Conference on Weights and Measures) to the contrary~~, vehicle and livestock scales, installed with a pit, shall have two feet minimum clearance from the bottom of the main girder~~,~~ that is lowest in platform support~~,~~ to the pit floor.

C. Exemptions. The provisions of this Section shall not apply to devices installed prior to January 3, 1975.

ARTICLE 3 PACKAGING, ~~AND~~ LABELING, AND METHOD OF SALE

R20-2-301 ~~Definitions and types of commodities~~ Application

~~A. Definitions. The following definitions are generally applicable to this Article.~~

~~1. "Bidimensional commodity" means a commodity which is measured and sold by the square of the basic unit (square inches, square feet, square yards, square centimeters, square meters).~~

~~2. "Combined declaration" means a statement on the label identifying the quantity contained within the package in~~ terms of two of the following criteria: weight, measure and/or count.

~~3. "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale.~~

~~4. "Consumer package" or "package of consumer commodity" means any commodity in package form that is produced or distributed for sale through retail agencies.~~

~~5. "Dual quantity declaration" means a declaration of weight, liquid measure, length measure or area measure which is made in terms of both the total of the units of inch/pound measure (ounce, fluid ounce, inch, square inch) and the larger whole unit (pound, pint, foot, square foot).~~

~~6. "Inch/pound system" see R20-2-105(B)(5).~~

~~7. "Label" means any written, printed or graphic matter applied to, molded into or appearing upon or adjacent to a commodity or a package for the purpose of identifying or giving information with respect to the contents of the package.~~

~~8. "Labeler or packager" means any person engaged in the packaging or labeling of any consumer commodity. Persons engaged in business as wholesalers or retail distributors of consumer commodities are not included in this definition, unless such persons prescribe or specify by any means the manner in which commodities are packaged or labeled.~~

~~9. "Multi-unit package" means a package containing two or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multi-unit package but capable of being individually sold in full compliance with all requirements of these regulations.~~

~~10. "Nonconsumer commodity or nonconsumer packages" means any commodity in package form intended solely for industrial or institutional use or for wholesale distribution.~~

~~11. "Package" see R20-2-101(B)(7).~~

~~12. "Principal display panel" means the part or parts of a label that is or are designed as to be most likely displayed or examined under normal conditions of display and purchase. All requirements pertaining to the "principal display panel" shall pertain to all "principal display~~

~~panels". This definition applies only to consumer commodities.~~

~~13. "Random package" means a package that is one of a lot, shipment or delivery of packages of the same consumer commodity with varying quantities.~~

~~B~~A. ~~Application~~

1. Regulations under this
   This Article shall apply to consumer and nonconsumer packages ~~which~~ that are produced, kept, offered or exposed for sale.
2. ~~In administering these regulations, the Director shall consider the provisions of other applicable state laws, the regulations authorized by those laws, and any established trade custom with respect to packaging and labeling, so long as the presentation provides adequate and accurate consumer information.~~

~~C~~B. ~~Exemptions. These rules and regulations~~ This Article shall not apply to:

1. Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined in ~~these regulations~~ Handbook 130;
2. Auxiliary containers or outer wrappings used to deliver packages of ~~such~~ commodities to retail customers if ~~such~~ the containers or wrappings bear no printed matter pertaining to any particular commodity;
3. Containers used for retail displays ~~when~~ if the container itself is not intended to be sold. ~~Example: A tray that is used to display individual envelopes of seasonings, gravies, and other similar commodities, when the tray is not for sale;~~
4. Commodities ~~put up~~ in variable weights and sizes ~~for sale intact and intended to be either~~ that are weighed or measured at the time of sale and where the method of sale is ~~clearly indicated in close proximity to the quantity~~ reflected near the commodity being sold;
5. Open carriers and transparent wrappers of carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by ~~these regulations~~ Handbook 130; or
6. Inner wrappings not intended ~~to be sold~~ for sale to customers.

~~R20-2-302 Declaration of identity and responsibility~~

~~A.~~ Declaration of identity. A declaration of identity on a consumer package shall appear:

~~1. On the principal display panel, and shall positively identify the commodity in the package by its common or usual name, description, generic term or the like;~~

~~2. Generally parallel to the base on which the package rests as it is designed to be displayed;~~

~~3. On the outside of the package and shall positively identify the commodity in the package by its common name, description, generic term, or the like.~~

~~B. Declaration of responsibility~~

~~1. Any package kept, offered or exposed for sale or sold at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer or distributor.~~

~~a. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted.~~

~~b. The address shall include street address, city, state and zip code; however, the street address may be omitted if this is shown in a current city directory or telephone directory.~~

~~2. If a person manufactures, packs or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading.~~

~~3. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with the commodity, such as, "Manufactured for and packed by _____". "Distributed by _____", or any other wording of similar import that expresses the facts.~~

~~4. Where a manufacturing, packing or distributing plant is identified by code number, a listing of all such code numbers shall be given to the Department, if requested.~~

~~C.~~ ~~Exemptions~~

~~1. Confectionery~~

~~a. Individually wrapped pieces of candy and other confectionery of less than ½ ounce net weight shall be exempt from the labeling requirements when the shipping container is in conformance with the labeling requirements.~~

~~b. Similarly, when such confectionery items are sold in bags or boxes, they are exempt from the labeling requirements, including the requirement of net quantity of contents, when the declaration of the bag or box meets all labeling requirements.~~

~~2. Tobacco (other than cigarettes). When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of this regulation, the individual items shall be exempt from these labeling requirements.~~

~~3. Soft drinks~~

~~a. Bottles of soft drinks shall be exempt from the placement requirements of the declaration of identity when such declaration appears on the bottle closure.~~

~~b. Multi-unit packages of soft drinks are exempt from the requirements for declaration of:~~

~~i. Identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging;~~

~~ii. Responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the inside of the individual units.~~

~~4. Butter and margarine, when packaged in 4-ounce, 8-ounce and 1-pound units with continuous label copy wrapping, are exempt from the requirements that the statement of identity be generally parallel to the base of the package.~~

~~5. Cosmetics. The principal display panel of a cosmetic marketed in a "boudoir type" container, including decorative cosmetic containers of the "cartridge", "pill box", "compact" or "pencil" variety, and those with a capacity of 1/4 ounce or less, may be a tear away tag or tape affixed to the decorative container, bearing the mandatory label information as required by this regulation.~~

6. ~~Motor oil or synthetic lubricants in 1 liquid quart, 1 gallon, 1 1/4 gallon, 2 gallon and 2 ½ gallon units, or their metric equivalent, bearing the principal display panel on the body of the container, are exempt from the requirements of this regulation, to the extent that the SAE (the Society of Automotive Engineers) grade is required to appear on the principal display panel; unless the SAE grade appears on the can lid and is expressed in letters and numerals in type size of at least 1/4 inch.~~
7. ~~These products, including pillows, cushions, comforters, mattress pads and sleeping bags that bear a permanent label as designed by the Association of Bedding and Furniture Law Officials shall be exempt from the requirements for the declaration of identity and responsibility; provided that the declaration of identity and responsibility satisfy the other requirements of these regulations, and that the information on the permanently attached label is fully observable to the purchaser.~~

R20-2-302 Handbook 130 and Handbook 133

All packaging, labeling, and method of sale requirements shall follow Handbook 130, except as otherwise stated in these rules. Packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery shall be weighed, measured, or inspected, using sampling and testing procedures designated in Handbook 133, except as otherwise stated in these rules.

~~**R20-2-303 Declaration of Quantity: Consumer Packages**~~

~~A. Quantity declarations and appropriate types of measure~~
~~1. Quantity declarations shall be expressed in terms of:~~
~~a. Liquid measure, if the commodity is liquid;~~
~~b. Weight, if the commodity is solid, semi-solid, viscous or a mixture of solid and liquid;~~
~~c. Or count.~~
~~2. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity (for a liquid, by weight; or for a solid, semi-solid or viscous product, by measure or count), such declaration may be used when it provides accurate and adequate information as to the quantity of the commodity.~~
~~B. Combined declaration. A declaration of quantity in terms of:~~
~~1. Weight shall be combined with appropriate declarations of the measure, count and/or size of the individual units, unless a declaration of weight alone is fully informative;~~
~~2. Measure shall be combined with appropriate declarations of the weight, count and/or size of the individual units, unless a declaration of measure alone is fully informative;~~
~~3. Count shall be combined with appropriate declarations of weight, measure and/or size of the individual units, unless a declaration of count alone is fully informative.~~
~~C. Declaration of quantity: inch/pounds~~
~~1. When quantity is declared in inch/pounds:~~
~~a. The units of weight shall be in terms of the avoirdupois pound, ounce or fraction thereof;~~
~~b. The units of liquid measure shall be in terms of U.S. gallons, liquid quarts, liquid pints, fluid ounces or fractions thereof. This declaration shall express the volume at 685F, except in the case of:~~
~~i. A commodity that is normally sold and consumed while frozen, in which case the declaration shall express the volume at the frozen temperature;~~
~~ii. A commodity that is normally sold in the refrigerated state, in which case the declaration shall express the volume at 405F;~~
~~iii. Petroleum products, in which case the declaration shall express the volume at 605F.~~
~~c. The units of linear measure shall be in terms of the inch, foot, yard or fractions thereof;~~
~~d. The units of area measure shall be in terms of the square inch, square foot, square yard or fractions thereof;~~
~~e. The units of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches, or the peck, dry quart and dry pint subdivisions of the bushel or fractions thereof;~~
~~f. The units of cubic measure shall be in terms of the cubic inch, cubic foot, cubic yard or fractions thereof.~~
~~2. Use of the term "ounce".~~
~~a. When the term "ounce" is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by use of the word "fluid", unless, through the association of terms, the proper meaning is obvious, as in "1 pint 4 ounces".~~
~~b. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declarations shall include the word "dry".~~
~~3. Abbreviations. When using the inch/pound system, these words shall be abbreviated as follows:~~

~~avoirdupois~~	~~avdp~~	~~ounce~~	~~oz~~
~~cubic~~	~~cu~~	~~pint~~	~~pt~~
~~feet or foot~~	~~ft~~	~~pound~~	~~lb~~
~~fluid~~	~~fl~~	~~quart~~	~~qt~~
~~gallon~~	~~gal~~	~~square~~	~~sq~~
~~inch~~	~~in~~	~~weight~~	~~wt~~
~~liquid~~	~~liq~~	~~yard~~	~~yd~~

~~D. Declaration of quantity: metric~~
~~1. When quantity is declared in metric terms:~~
~~a. The units of mass shall be in terms of the milligram, gram and kilogram;~~
~~b. The units of liquid measure shall be in terms of the milliliter or liter and shall express the volume at 205C; except in the case of:~~
~~i. A commodity that is normally sold and consumed while frozen, in which case the declaration shall express the volume at the frozen temperature;~~
~~ii. A commodity that is normally sold in the refrigerated state, in which case the declaration shall express the volume at 45C;~~
~~iii. Petroleum products, in which case the declaration shall express the volume at 15.65C;~~
~~c. The units of linear measure shall be in terms of the millimeter, centimeter or meter;~~
~~d. The units of area measure shall be in terms of the square centimeter or square meter;~~
~~e. The units of dry measure shall be in terms of the milliliter and liter;~~
~~f. The units of cubic measure shall be in terms of cubic centimeter and cubic meter.~~
~~2. Abbreviations~~
~~a. When using the metric system, these words shall be abbreviated as follows:~~

~~kilogram~~	~~kg~~	~~centimeter~~	~~cm~~
~~gram~~	~~g~~	~~millimeter~~	~~mm~~

milligram	mg	square meter	m^2
liter	L or l	square centimeter	mm^2
milliliter	mL or ml	cubic meter	m^3
meter	m	cubic centimeter	cm^3

b. Capitalization and punctuation of abbreviations or symbols
   i. Symbols, except for liter, are not capitalized unless the unit is derived from a proper name.
   ii. The "L" and "mL" symbols are preferred for liter and milliliter respectively, but the use of "l" and "ml" are permitted.
   iii. Periods should not be used after the symbol.
   iv. Symbols are always written in the singular form: do not add "s" to express the plural when a symbol is used.

E. Largest whole units, fractions and decimals
1. Largest whole unit. Where these regulations require that the quantity declaration be in terms of the largest whole unit, the declaration shall, with respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed as follows:
   a. In inch/pounds:
      i. In common decimal fractions of such largest whole unit; or
      ii. In the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration;
   b. In metric: in metric units and in decimal fractions of such largest whole unit.
2. Fractions
   a. Inch/pound. An inch/pound statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths or thirty-seconds, except that:
      i. If there exists a firmly established general consumer usage and trade custom for employing different common fractions in the net quantity declaration of a particular commodity, they may be employed; or
      ii. If linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds.
   b. Metric. A metric statement in a declaration of net quantity of contents of any consumer commodity may contain only decimal fractions.
   c. Common fractions. A common fraction shall be reduced to is lowest term. Example: 2/4 becomes ½.
   d. Decimal fractions. A decimal fraction shall not be carried out to more than two places.

F. Net quantity
1. A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package, and unless otherwise specified in these regulations, shall be in terms of the largest whole unit.
2. The term "net weight" shall be used in conjunction with the declaration of quantity in terms of weight; the term may either precede or follow the declaration of weight.
3. A declaration of quantity may appear on one or more lines of print or type.

G. Exemptions
1. Confectionery – see R20-2-302(C)(1).
2. Individual serving size packages of food containing ½ ounce or less, 15 grams or less, ½ fluid ounce or less or 15 milliliters or less, and which are not intended for sale at retail, shall be exempt from the requirements of this regulation.
3. Tobacco (other than cigarettes) – see R20-2-302(C)(2).
4. Fluid dairy products, ice cream and similar frozen desserts. When packaged in ½ liquid pint and ½ gallon containers, these shall be exempt from the requirements for stating net contents in 8 fluid ounces and 64 fluid ounces and may be expressed as ½ pint and ½ gallon respectively.
5. Fruit juice beverages (single strength and less than single strength), imitations thereof and drinking water, when packaged in glass, plastic or fluid milk type paper containers of 8 and 64 fluid ounce capacity, are exempt from the requirements of R20-2-303(C)(1)(b) of this regulation to the extent that the net contents of 8 fluid ounces and 64 fluid ounces (or two quarts) may be expressed as ½ pint or "half pint" and ½ gallon or "half gallon" respectively.
6. Camera film, exposed and unexposed, packaged and labeled for retail sale, is exempt from the net quantity statement which specifies how measurement of commodities should be expressed; provided, that:
   a. The net quantity of contents on packages of movie film and still film is expressed in terms of the number of linear feet or meters of usable film contained therein;
   b. The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurement of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. Example: "36 exposures, 36 x 25 mm" or "12 exposures, 2 1/4 x 2 1/4 in".
7. Individual packaged commodities put up in variable weights and sizes for sale intact and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale are exempt from the requirements of this regulation while moving in commerce and while held for sale prior to weighing and marking; provided, that the outside container bears a label declaration of the total weight.
8. Packaged commodities measured in terms of count. When a packaged consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this regulation, except that those containing 6 or less items need not include a statement of count.

R20-2-304 Declaration of Quantity: Prescribed Units for Consumer Packages According to Size, Bidimensionality or Count

A. Prescribed units – inch/pound system
1. Packages less than 1 pound, 1 pint, 1 foot or 1 square foot. The declaration of quantity shall be expressed in terms of:
   a. For weight – ounces and fractions of ounces;
   b. For liquid measure – fluid ounces and fractions of fluid ounces;

c. For length measure — inches and fractions of inches;

d. For area measure — square inches and fractions of square inches;

e. Provided that the quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

2. Dual quantity declaration for packages of 1 pound, 1 pint, 1 foot or 1 square foot or more, but less than 4 pounds, 1 gallon, 4 feet or 4 square feet. The declaration of quantity shall be expressed in terms of:

a. For weight — ounces and, in addition, shall be followed by a declaration in parentheses expressed in terms of the largest whole unit: provided that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions carried out to not more than two decimal places.

b. For liquid measure — fluid ounces, followed, in addition, by a declaration in parentheses, expressed in terms of the largest whole unit.

c. For length measure — inches, followed, in addition, by a declaration in parentheses, expressed in terms of the largest whole unit.

d. For area measure — square inches, followed, in addition, by a declaration in parentheses, expressed in terms of the largest whole unit.

3. Packages of more than 4 pounds, 1 gallon, 4 feet and 4 square feet. The declaration of quantity shall be expressed in terms of:

a. For weight, liquid measure and area measure — the largest whole unit;

b. For length — a dual quantity declaration, consisting of the number of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder expressed in terms of feet and inches.

4. Bidimensional commodities (including roll-type commodities). The declaration of quantity shall be expressed as follows:

a. If less than 1 square foot, in terms of linear inches and fractions of linear inches;

b. If at least 1 square foot but less than 4 square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit; provided, that

i. No square inch declaration is required for a bidimensional commodity of 4 inches width or less;

ii. A dimension of less than 2 feet may be stated in inches within the parentheses; and

iii. Commodities consisting of usable individual units (except for roll-type commodities with individual usable units created by perforations, as set forth in R20-2-304(C)(2) of this regulation) require a declaration of unit area, but not a declaration of total area of all such units;

c. If 4 square feet or more, in terms of square feet, followed in parentheses by a declaration of the length and width in terms of the largest whole unit, provided that;

i. No declaration in square feet is required for a bidimensional commodity with a width of 4 inches or less;

ii. Bidimensional commodities, with a width of 4 inches or less, shall have the length expressed in inches followed by a statement in parentheses of the length in the largest whole unit. Example: 2 inches by 360 inches (10 yards);

iii. A dimension of less than 2 feet be stated in inches within the parentheses;

d. No declaration in square feet is required for commodities for which the length and width measurements are critical in terms of the end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

B. Prescribed units — metric

1. Packages less than 1 kilogram, 1 liter, 1 meter and 1 square meter. The declaration of quantity shall be expressed in terms of:

a. For mass — grams and decimal fractions of a gram, but if less than a gram, the declaration of quantity shall be expressed in millimeters;

b. For liquid measure — milliliters;

c. For length measure — centimeters or millimeters;

d. For area measure — square centimeters and decimal fractions of square centimeters;

e. Provided, that the quantity declaration appearing on a random weight package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than three decimal places.

2. Packages of 1 kilogram, 1 liter, 1 meter and 1 square meter or more. The declaration of quantity shall be expressed in terms of:

a. For mass — kilograms and decimal fractions to not more than two places;

b. For liquid measure — liters and decimal fractions to not more than two places;

c. For length measure meters and decimal fractions to not more than two places;

d. For area measure — square meters and decimal fractions to not more than two places.

3. Bidimensional commodities (including roll-type commodities). The declaration of quantity shall be expressed as follows:

a. If less than 1 square meter, in terms of length and width;

b. If 1 square meter or more, in terms of square measure followed in parentheses by a declaration of length and width; provided that:

i. Quantity declarations on bidimensional commodities with a width of 100 millimeters or less may be expressed in terms of width and length only;

ii. Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see R20-2-304(C)(2) of this regulation) require a declaration of unit area but not a declaration of total area of all such units;

iii. No declaration in square units is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such com-

modities clearly present the length and width measurements on the label.

C. Count
1. Ply. If the commodity is in individually usable units of one or more components or ply, the quantity declaration shall, in addition to complying with other applicable requirements of this regulation, include the number of ply and the total number of usable units.
2. Roll-type commodities, when perforated so as to identify individual usable units, shall not be deemed to be made up of usable units; however, such roll-top commodities shall be labeled in terms of:
   a. Total area measurement;
   b. Number of ply;
   c. Count of usable units, and
   d. Dimensions of a single usable unit.

D. Supplementary declarations
1. Combined metric and inch/pound declarations
   a. A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental statement, but is jointly recognized, and either the metric system or the customary system used in the United States may be used for all commercial purposes in the state.
   b. Rounding. In all conversions for the purpose of showing an equivalent metric or inch/pound quantity to a rounded customary or metric quantity, the number of significant digits retained should be such that accuracy is neither sacrificed nor exaggerated. As a general rule, converted values should be rounded down by dropping any digit beyond the first three (Example: 196.4 grams becomes 196 grams or 1.759 feet becomes 1.75 feet).
2. The required quantity declaration may be supplemented by one or more declarations of weight, measure, of count, such declarations appearing on other than a principal display panel.
3. Qualification of declaration prohibited
   a. Such supplemental statement of quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package. Example: "giant quart", "larger liter", "full gallon", "when packed", "minimum" or words of similar import.
   b. Nor shall such terms be used to qualify any declaration of quantity.

E. Exemptions
1. Whenever any consumer commodity or package of consumer commodity is exempted from the requirements for dual quantity declaration, the net quantity declaration required to appear on the package shall be in terms of the largest whole unit.
2. A random package bearing a label conspicuously declaring the net weight shall be exempt from the dual declaration requirement. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted in this Subsection.
3. Packaged commodities with labeling requirements specified by federal law. Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides and alcoholic beverages shall be exempt from the requirements for dual declarations provided that quantity labeling requirements for such products are specified in federal law so as to follow reasonably sound principles of providing customer information.
4. Fluid dairy products, ice cream and similar frozen desserts, when packaged in 1 liquid pint, 1 liquid quart and ½ gallon containers, shall be exempt from the dual declaration requirements of this regulation.
5. Fruit juice beverages (single strength and less than single strength), imitations thereof and drinking water, when packed in glass, plastic, or fluid milk type paper containers of 1 pint, 1 quart and ½ gallon capacities, are exempt from the dual net contents declaration requirements of this regulation.
6. Butter, when packaged in 1 pound units with continuous label copy wrapping and margarine in 1 pound rectangular packages (except for packages containing whipped or soft margarine or packages containing more than four sticks) shall be exempt from the dual quantity declaration requirements of this regulation.
7. Wheat flour, packaged in 2 pound units, shall be exempt from the dual quantity declaration requirements of this Section.
8. Camera film — see R20-2-303(G)(6).
9. Paints, varnishes, lacquers, thinners, removers, oils, resins and solvents, when packed in 1 liquid pint and 1 liquid quart units, shall be exempt from the dual quantity declaration requirements of this regulation.
10. Motor oils and synthetic lubricants, when packed in 1 liquid quart units, shall be exempt from the dual quantity declarations requirements of this regulation.
11. Antifreeze, when packed in 1 liquid quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of this regulation.
12. Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of this regulation while moving in commerce and while held for sale prior to weighing and marking; provided, that the outside of the container bears a label declaration of the total weight.
13. Commodities measured in terms of count — see R20-2-303(G)(8).
14. Packaged fishing lines and reels are exempt from the dual quantity declaration requirements of this Section; provided that the quantity or capacity, as appropriate, is presented in terms of yards or meters in full accord with all other requirements of the regulations in this Article.

R20-2-305 Declaration of Quantity: Types and Units of Measure for Nonconsumer Packages

A. A nonconsumer package shall bear on the outside a declaration of the quantity of the contents. Such declaration shall be in terms of the largest whole unit, as provided elsewhere in this regulation.

B. The declaration of quantity of a particular commodity shall be expressed in terms of:
1. Liquid measure, if the commodity is liquid;
2. Weight, if the commodity is solid, semi-solid, viscous, or a mixture of solid and liquid;
3. Or count.
4. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a

particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

C. A declaration of quantity shall be in accord with the following Subsections of R20-2-303:
1. Units of weight and mass:
   a. In inch/pounds – (C)(1)(a)
   b. In metric – (D)(1)(a)
2. Units of liquid measure:
   a. In inch/pounds – (C)(1)(b)
   b. In metric – (D)(1)(b)
3. Units of linear measure:
   a. In inch/pounds – (C)(1)(c)
   b. In metric – (D)(1)(c)
4. Units of area measure:
   a. In inch/pounds – (C)(1)(d)
   b. In metric – (D)(1)(d)
5. Units of dry measure:
   a. In inch/pounds – (C)(1)(e)
   b. In metric – (D)(1)(e)
6. Units of cubic measure:
   a. In inch/pounds – (C)(1)(f)
   b. In metric – (D)(1)(f)

D. Abbreviations:
1. In inch/pounds – see R20-2-303(C)(3)
2. In metric – see R20-2-303(D)(2)

E. The average quantity of contents in the package of a particular lot, shipment or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though averages in other packages in the same shipment, delivery or lot compensate for such shortage.

R20-2-306 Prominence and Placement of Principal Display Panel and Type Size

A. Principal display panel – general:
1. Readability
   a. All information required to appear on a consumer package shall be prominent, definite, and plain; and shall be conspicuous as to size and style of letters and numbers, and as to color of letters and numbers in contrast with the color of the background.
   b. Required information that is either in hand-lettering or hand-script shall be entirely clear and equal to printing in legibility.
2. Whenever a principal display panel appears more than once upon or adjacent to a package, all requirements pertaining to the single principal display panel shall pertain to all such principal display panels. This Section shall apply only to consumer packages.

B. Placement and presentation of declaration of quantity within principal display panel:
1. Location. The declaration of quantity of the contents of a package shall appear in the bottom 30 percent of the principal display panel(s), except as otherwise provided in these regulations for cylindrical containers.
2. Style of type or lettering. The declaration of quantity shall be such a type style or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering or graphic material on the package.
3. Color contrast. The declaration of quantity shall be in a color that contrasts conspicuously with its background.
4. Free area. The area surrounding the quantity declaration shall be free of printed information:
   a. Above and below, by a space equal to at least the height of the lettering in the declaration; and
   b. To the left and right, by a space equal to twice the width of the letter "N" in the style and size of type used in the declaration.

C. Area of principal display panel and type size:
1. The determination of the principal display panel shall exclude the tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles and jars.
2. Calculating area of panel. The square inch or meter area of the principal display panel shall be:
   a. For rectangular containers (one entire side of which properly can be considered to be the principal display panel) the sum of the height times the width of that side;
   b. For cylindrical or nearly cylindrical containers, 40 percent of the sum of the height of the container times the circumference;
   c. For other shaped containers, 40 percent of the total surface of the container; unless such container presents an obvious principal display panel (e.g., the top of a triangular or circular package of cheese, or the top of a can of shoe polish), in which case the entire surface shall be taken to be the principal display area.
3. Minimum height of numbers and letters:
   a. The height of any letter or number in the required quantity declaration shall not be less than that shown in the table below with respect to the square inch area of the panel, and the height of each number of a common fraction shall meet one half the minimum height standards.

Minimal Height of Numbers and Letters

Square inch area of principal display panel and letters[2]	Minimum height of numbers	Minimum label information blown, formed, or molded on surface of container
5 square inches and less	1/16 inch	1/8 inch
Greater than 5 square inches but not greater than 25 square inches	1/8 inch	3/16 inches
Greater than 25 square inches but not greater than 100 square inches	3/16 inches	1/4 inch
Greater than 100 square inches but not greater than 400 square inches	1/4 inch	5/16 inch
Greater than 400 square inches	1/2 inch	9/16 inches

   b. The size of the principal display panel, not the size of the label on the package, shall determine the letter size.
   c. No number or letter shall be more than three times as high as it is wide.

D. Exemptions:
1. Random packages:
   a. A random package, bearing a label conspicuously declaring the net weight, the price per unit of

~~weight and the total price, shall be exempt from the type size, placement and free area requirements of this regulation.~~

~~b. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted by this Section.~~

~~2. Cartons of cigarettes and small cigars, containing 10 individual packages of 20, labeled in accordance with the requirements of this regulation, shall be exempt from the requirements for location and minimum height of numbers and letters, provided that such cartons bear a declaration of the net quantity of the commodity in the package.~~

~~3. Packages labeled under federal law. Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides and alcoholic beverages shall be exempt from the requirements for location and minimum height of numbers and letters, provided labeling requirements for such products are specified in federal law, so as to follow reasonably sound principles of providing consumer information.~~

~~4. Fluid dairy products, ice cream and similar frozen desserts:~~

~~a. When measured by and packed in ½ liquid pint, 1 liquid pint, 1 liquid quart, ½ liquid gallon and 1 liquid gallon measure containers and defined in the "Measure Container" section of the National Bureau of Standards Handbook 44 (as adopted by the National Conference on Weights and Measures), are exempt from the location requirements of this Regulation.~~

~~b. Milk and milk products, when measured by and packaged in glass or plastic containers of the sizes allowed by R20-2-402, are exempt from the requirements for location, type size of lettering and color contrast; provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.~~

~~5. Fruit juice beverages (single strength and less than single strength), imitations thereof and drinking water, when packaged in glass or plastic containers of ½ pint, 1 quart, ½ gallon and 1 gallon capacities are exempt from the location requirements of this regulation; provided that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.~~

~~6. Bottles of soft drinks shall be exempted from the placement requirements for the declaration of quantity, when such information is blown, formed or molded on or above the shoulder of the container and when all other required information appears on the bottle closure.~~

~~7. Butter and margarine, when packaged in 4 ounce, 8 ounce and 1 pound units with continuous label copy wrapping (except for packages containing whipped or soft margarine or margarine packages containing more than 4 sticks) are exempt from the requirements that net declaration be generally parallel to the base of the package and also exempt from location requirements in this regulation.~~

~~8. Cartons containing 12 eggs shall be exempt from the requirement for location of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of this regulation, provided that the undivided carton conforms to all such requirements.~~

~~9. On a principal display panel of five square inches or less, the declaration of quantity need not appear in the bottom 30 percent of the principal display panel if that declaration satisfies the other requirements of this regulation.~~

~~10. Cosmetics -- see R20-2-302(C)(5).~~

~~11. Combination packages are exempt from the requirements for location, free area and minimum height of numbers and letters as set forth in this regulation.~~

~~12. Corn flour, packaged in conventional 5-, 10-, 25-, 50- and 100-pound bags, shall be exempt from the requirement in this regulation for location of the net quantity declaration.~~

~~13. Wheat flour, packaged in units of 2-, 5-, 10-, 25-, 50- and 100-pounds, shall be exempt from the requirement for location of the net quantity declaration.~~

~~14. Those products, including pillows, cushions, comforters, mattress pads, and sleeping bags, that bear a permanent label as designated by the Association of Bedding and Furniture Law Officials shall be exempt from the requirements for location, size of letters or numbers and free area; provided that the declaration of quantity is presented on a permanently attached label which is fully observable to the purchaser and which satisfies the other requirements of these regulations.~~

~~R20-2-307 Labeling Requirements for Specific Types of Consumer Packages~~

~~A. Multi-unit, combined, variety packages and display cards:~~

~~1. General. Unless indicated to the contrary, the requirements of this Section are in addition to those general requirements already prescribed in earlier Sections of this Article.~~

~~2. Multi-unit packages~~

~~a. Any multi-unit package, containing more than one individual "commodity in package form" of the same commodity shall bear on the outside of the package a declaration of:~~

~~i. The number of individual units;~~

~~ii. The quantity of each individual unit; and~~

~~iii. The total quantity of the contents of the multi-unit package.~~

~~b. The requirement for the declaration of a total quantity of contents for a multi-unit package shall be effective with respect to those labels revised after the effective date of this regulation. Any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation.~~

~~3. Combined packages. Any package containing individual units of dissimilar commodities, such as an antiquing kit, shall bear on the label of the package a quantity declaration.~~

~~4. Variety packages. Any package containing individual units of reasonably similar commodities (for example, seasonal gift packages or variety packages of cereal)~~

shall bear on the label of the package a declaration of the total quantity of the commodity in the package.

5. Display cards. For an additional package affixed to a display card or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card.

B. Containers

1. Commodities as containers. Commodities designed and sold at retail to be used as containers for other material or objects, such as bags, cups, boxes, and pans, shall be labeled with declarations of net quantity as follows:

a. For bag type commodities, in terms of count, followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise):

i. When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed:

(1) For inch/pound units -- in inches, except that a dimension of 2 feet or more will be expressed in feet with any remainder in terms of either inches or common or decimal fractions of the foot. Example: "25 bags, 17 inches x 20 inches" or "100 bags, 20 inches x 2 feet 6 inches", or "50 bags, inches x 2 ½ feet";

(2) For metric units -- in millimeters, except that a dimension of 1 meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter. Examples: "25 bags, 500 millimeters x 600 millimeters", or "50 bags, 750 millimeters x 1.2 meters";

ii. When the unit bag is gusseted, the dimensions will be expressed as width, depth and length:

(1) For inch/pound units -- expressed in feet, with any remainder in terms of either inches or the common or decimal fractions of the foot. Example: "25 bags, 17 inches x 4 inches x 20 inches", or "100 bags, 20 inches x 12 inches x 2 ½ feet";

(2) For metric units -- in millimeters, except a dimension of 1 meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter. Examples: "25 bags, 430 millimeters x 100 millimeters x 500 millimeters", or "50 bags, 500 millimeters x 30 millimeters x 1.2 meters";

(3) For other square, oblong, rectangular, or similarly shaped containers -- in terms of count, followed by length, width and depth; except depth need not be listed when less than 2 inches or 50 millimeters. Examples: "2 cake pans, 8 inches x 8 inches", or "2 pans, 203 millimeters x 203 millimeters", or "roasting pan, 12 inches x 8 inches x 3 inches";

(4) For circular or other generally round shaped containers, except cups and the like -- in terms of count, followed by diameter and depth; except depth need not be listed when less than 2 inches or 50 millimeters. Example: "4 pie pans, 8 inches diameter x 4 inches", "2 pie pans, 200 millimeters diameter x 100 millimeters";

(5) The net quantity statement for containers such as cups, notwithstanding the above requirements, will be listed in terms of count and liquid capacity per unit. Example: "24 cups, 6 fluid ounce capacity", or "24 cups, 250 milliliter capacity". For purposes of this Section, the use of the term "capacity", "diameter", and "fluid" are optional.

2. Capacity of containers. When the functional use of the container is related by label references in standard terms of measure to the holding capability of a specific quantity of substance or class of substance, such references shall be a part of the net quantity statement and shall specify capacity as follows:

a. For liquid measure (for containers which are intended to be used for liquids, semi-solids, viscous materials or mixtures of solids and liquids) -- the expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce, liter), with any remainder in terms of the common or decimal fraction of that unit. Example: "Freezer boxes: 4 boxes, 1 quart capacity, 5 inches x 4 inches x 3 inches" or "Freezer boxes: 4 boxes, 1 liter capacity, 150 millimeters 120 millimeters".

b. For dry measure (for containers which are intended to be used for solids) -- the expressed capacity shall be stated in terms of the largest whole unit (bushel, peck, liter) with any remainder in terms of the common or decimal fraction of that unit. Example: "Leaf bags -- 8 bags, 6 bushel capacity, 3 feet x 5 feet", or "8 bags, 200 liter capacity, 85 millimeter x 1.5 meters".

c. Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container. Example: "Garbage can liners -- 10 liners, 2 feet 6 inches x 3 feet 9 inches. Fits up to 30 gallons", or "10 liter, 750 millimeters x 1 meter. Fits up to 120 liter cans".

C. Miscellaneous package types

1. Aerosol packages and similar pressurized packages shall carry declarations of quantity which shall disclose the net quantity of the commodity (including propellant), in terms of the net weight of the product which will be expelled when the instructions for use, as shown on the container, are followed.

2. On cylindrical or nearly cylindrical containers, information required to appear on the principal display panel shall appear within that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under the customary conditions of display for retail sale.

3. When cartons containing 12 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its text destroyed when the carton is divided.

D. Placard labels. A placard label may be used at the retail level to advertise or label fresh produce. Such produce shall be deemed in compliance with this rule if it is labeled by placard. The placard shall identify the produce, state the unit price per measure or the net weight and the retail or sale price

in a prominent and conspicuous manner and in lettering at least 3/8 inches in height.

1. Whenever the individual packages are labeled, they shall in every respect agree with the information displayed upon the placard, however, if the sale price on the placard differs from the retail price marked on the individual packages, the placard sales price shall prevail.
2. Consumer grades, either USDA or Arizona, may, when the produce is so graded, be displayed upon the placard.

E. Exemptions
1. Confectionery -- see R20-2-302(C)(1).
2. Tobacco (other than cigarettes) -- see R20-2-302(C)(2).
3. Cartons of cigarettes and small cigars, containing 10 individual packages of 20, labeled in accordance with the requirements of this regulation, shall be exempt from the requirements set forth in R20-2-307(A)(2); provided that such cartons bear a declaration of net quantity on the package.
4. Bottles of soft drinks shall be exempt from the placement requirements for the declaration of quantity as set forth in R20-2-307(C)(2), when such declaration is blown, formed or molded on or above the shoulder of the container and when all information required by this regulation appears only on the bottle closure.
5. Packaged commodities measured in terms of count -- see R20-2-303(G)(8).

R20-2-308 Textile Commodities: Prominence and Place of Display of Information

A. Definitions
1. "Textiles" means, for the purposes of this regulation:
   a. Textile commodities, such as, bedsheets, blankets, pilloweases, comforters, quilts, bedspreads, afghans, dish towels, dish cloths, towels, face cloths, napkins, bath mats, carpets and rugs, pot holders, sewing and handicraft thread; and
   b. Textile and nontextile commodities, such as mattress covers and pads, throws, dresser and other furniture scarfs, table cloths, flags, curtains and drapes, utility cloths, fixture and appliance covers and slip covers.
2. "Wearing apparel" means, for the purposes of this regulation, textile and nontextile apparel and accessories, such as leather goods and footwear, sold as single unit items or, if normally sold in pairs, such as hosiery, gloves and shoes, sold as single unit pairs.
3. "Permanent label" means a label attached to certain textile and non-textile commodities, as defined above, designated by the Association of Bedding and Furniture Law Officials. Such labels may be perforated so as to allow the purchase to tear them off after purchase.

B. Permanent labels. A permanent label, as defined above, shall be in conformity with the regulations of this Article and shall be easily seen by the customers.

C. Specific commodities
1. Fitted sheets and mattress covers
   a. The quantity statement shall state the size designation of the mattress for which the commodity is designed, such as, "twin", "double", and "king".
   b. The quantity statement shall also state, in inches and/or in centimeters, the length and width of the mattress for which the item is designed. Example: "Twin fitted sheet for 30 inch x 75 inch mattress".
2. Flat sheets
   a. The quantity statement for flat sheets shall state the size designation of the mattress for which the sheet is designed, such as, "twin", "double", and "king".
   b. The quantity statement also shall state, in inches and/or in centimeters the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement of the length and width of the finished sheet. Example: "Double flat sheet for 100 centimeter x 190 centimeter mattress (170 centimeter x 240 centimeter finished size)".
3. Pilloweases
   a. The quantity statement for pilloweases shall state the size designation of the pillow for which the finished pillowcase is designed, such as, "youth", "standard", and "queen".
   b. The quantity statement also shall state, in inches and/or in centimeters, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement of the length and width of the finished pillowcase. Example: "Standard pillowcase for 50 centimeter x 65 centimeter pillow (50 centimeter x 75 centimeter finished size)".
4. Blankets, comforters, quilts, bedspreads, mattress pads, afghans and throws
   a. The quantity statement shall state in inches and/or in centimeters the length and width of the finished item.
   b. The quantity statement also may state in inches and/or in centimeters the length of any ornamentation and the size designation of the mattress for which the item is designed, such as, "twin", "double", and "king".
5. Tablecloths and napkins. The quantity statement shall state in inches and/or in centimeters the length and width of the finished item.
6. Curtains, drapes, flags, furniture scarfs and similar commodities
   a. The quantity statement shall state in inches and/or in centimeters the length and width of the finished item.
   b. The quantity statement also may state parenthetically in inches and/or in centimeters the length of any ornamentation.
7. Carpets and rugs
   a. The quantity statement shall state in feet and/or meters (with any remainder in decimal fractions of the meter, for metric sizes, or common or decimal fractions of the foot or inches, for customary sizes) the length and width of the item.
   b. The quantity statement also may state parenthetically in inches and/or in centimeters the length of any ornamentation.
8. Dish towels, dish clothes, towels, face cloths, utility cloths, bath mats and similar commodities
   a. When woven, they shall carry a quantity statement which states in inches and/or in centimeters the length and width of the item.
   b. When knitted, they shall carry a quantity statement without dimensions.
9. Products, such as pot holders, fixture and appliance covers, slip covers and similar commodities, shall carry a quantity statement expressed in terms of count and may

include size designations and also dimensions in inches and/or in centimeters.

10. Non-rectangular textile and non-textile products identified in this Section shall state the geometric shape of the product and the dimensions customarily used in describing such geometric shapes in inches and/or in centimeters. Example: "Oval tablecloth, 54 inches x 42 inches", which, in this case, represents the maximum length and width.
11. Packages of remnants of textile products of assorted sizes, when sold by count, shall bear a quantity statement accompanied by the term "irregular dimensions", and the minimum size of such remnants expressed in inches and/or in centimeters.
12. Variety packages of textiles are required to carry a combined declaration, stating the quantity of each individual unit.

D. Variations from declared dimensions allowable for textiles. For an item with declared dimensions:
1. A minus variation greater than 3 percent of a declared dimension shall be considered unreasonable;
2. A plus variation greater than 6 percent of a declared dimension shall be considered unreasonable.

E. Threads
1. Sewing and handicraft threads
   a. The net quantity statement for sewing and handicraft thread shall be expressed in terms of yards and/or meters.
   b. The net quantity statement for yarns shall be expressed in terms of weight.
   c. Thread products may, in lieu of name and address, bear a trademark symbol, brand or other mark that positively identifies the manufacturer, packer or distributor, provided that such marks, employed to identify the vendor, shall be filed with the Department.
2. Industrial thread
   a. Industrial thread shall be marked to show its net measure in terms of length or its net weight in terms of grams or avoirdupois pounds or ounces.
   b. Ready-wound bobbins, which are not sold separately, shall not be required to be individually marked, but the package containing such bobbins shall be marked to show:
      i. The number of bobbins contained therein; and
      ii. The net yards and/or meters of thread on each bobbin.

F. Exemptions
1. Wearing apparel, as defined in R20-2-308(A)(2) shall be exempt from the requirement for net quantity statement by count.
2. Textiles (other than wearing apparel), as defined in R20-2-308(A)(1) shall be exempt from the requirements of other regulations in this Article, except as noted in this Section.
3. Variety packages of textiles shall be exempt from the requirement for labeling standards, as stated in R20-2-306, covering:
   a. Location,
   b. Free area and
   c. Minimum height of numbers and letters.

R20-2-309 Prominence and Placement: Nonconsumer Packages

A. All information required to appear on a nonconsumer package shall be definitely and clearly stated thereon.

B. Any required information that is either in hand-lettering or hand-script shall be entirely clear and equal to printing in legibility.

R20-2-310 Labeling Polyethylene Commodities

A. Definition. The term "polyethylene", when applied to sheeting, bags, lay-flat tubing, sheets, drop cloths and tarpaulins, shall mean commodities manufactured with thicknesses of 10 mils (0.010 inch) or less. The commodities shall be made from polyethylene or modified polyethylene, such as ethylene copolymer, consisting of a major proportion of ethylene in combination with a minor proportion of some other monomer, or a mixture of polyethylene with a lesser amount of other polymers. It may contain additives or modifiers such as pigments and stabilizers.

B. For polyethylene sheeting in consumer packages, the declaration of quantity shall be expressed in terms of:
1. Thickness, in mils (0.001 inch); and
2. Width and length.

C. For polyethylene sheeting in nonconsumer packages, the declaration of quantity shall be expressed in terms of:
1. Thickness, in mils (0.001 inch);
2. Width and length; and
3. Net weight, with any remainder expressed in common or decimal fractions. A decimal fraction shall not be carried out to more than two decimal places.

D. For rolls, bales, and containers of bags and sheets and other polyethylene commodities in package form, the declaration of quantity shall be expressed in terms of:
1. The count of usable units;
2. Width and length of each unit (dimensions of gusseted bags shall be expressed as width, depth and length);
3. Thickness, in mils (0.001 inch); and
4. A statement of weight on nonconsumer commodities.

E. For drop cloths and tarpaulins, the declaration of quantity shall be expressed in terms of:
1. The width and length in largest unit of measure; and
2. The thickness, in mils (0.001 inch).

F. For lay-flat tubing, the declaration of quantity shall be expressed in terms of:
1. The width, in inches and/or in centimeters;
2. The length, in feet and/or meters;
3. The thickness, in mils (0.001 inch); and
4. Net weight, with any remainder expressed in common or decimal fractions. A decimal fraction shall not be carried to more than two decimal places.

R20-2-311 Voluntary Open Dating and Pull Dating

A. Definitions
1. "Food commodity in package form" means a food commodity put up or packaged in any manner in advance of sale. Where the term "food package" is used in this regulation, it shall mean "food commodity in package form", as herein defined.
2. "Open date" means a manner of expressing the pull date which is meaningful to the consumer.
3. "Perishable food commodity" means any food commodity in package form which the manufacturer or packer determines as having a significant risk of spoilage and loss of value and/or palatability; provided that the term does not include meats, poultry, seafood and fresh produce.
4. "Pull date" means the last date on which a perishable food commodity should be sold without a significant risk of spoilage and loss of value and/or palatability.

B. General application

1. Except for consumer packages and commodities in package form, open dated in accordance with existing federal regulations, any open dating information provided or required for any perishable food commodity shall be provided in the manner prescribed in this Section.
2. The date referred to in this regulation shall be construed to be the "pull date", as defined above.

C. Manner of expressing date
1. The date may be accompanied by a statement appropriately identifying it as a pull date by the use of such terms as "sell by" or words of similar import.
2. The date shall conform to the following requirements:
   a. It shall show first the month and then the day of the month, followed by the year, if used;
   b. The month shall be shown by:
      i. Letters that clearly identify the month, or
      ii. Digits "1" through "12", where "1" signifies January, "2" signifies February, and so on through to "12" which signifies December;
   c. The day of the month shall be shown by the digits "1" through "2" to show the date within the month specified;
   d. The digits of the month shall be separated from the digit or digits for the date within the month by a space, a dash, an asterisk or another symbol.

D. Placement of the date
1. If the date permitted by this regulation is used, it shall be placed on each package made available to purchasers.
2. If used, the date shall be presented in a size, manner, and style clearly and easily legible to the purchaser at the time of purchase.
3. With bagged food commodities, the date may be expressed in an easily legible manner on the closure of the bag.

R20-2-312 Unit Pricing

A. Definitions
1. "Unit" or "appropriate sub-unit" means a quantity adopted as a standard of measurement.
2. "Food" means a commodity intended for human or animal consumption.
3. "Cleaning products" mean dry detergents, soap powders, soaps, liquid detergents, scouring powders, scouring liquids and window cleaners.
4. "Wrapping products" mean those wrapping products made from paper, plastic or aluminum.
5. "Paper products" mean napkins, towels, tissues and toilet paper.
6. "Retail" means the sale of commodities to ultimate consumers or purchasers.

B. Application
1. Any person who offers for sale food, cleaning, wrapping and paper products at retail and who chooses to offer cost-per-unit information shall do so by proclaiming:
   a. The brand name of the item;
   b. The quantity declaration of the package;
   c. Product identity;
   d. The total retail price; and
   e. The price per appropriate unit of measure.
2. Declaration of quantity appropriate of unit or sub-unit
   a. For commodities with quantity declarations by net weight, the appropriate unit or sub-unit shall be pounds or ounces.
   b. For commodities with quantity declarations by volume, the appropriate unit or sub-unit shall be quart or fluid ounces.
   c. For commodities with quantity declarations by count, the appropriate unit or sub-unit shall be by count with multiples of 10.
   d. For commodities with quantity declarations by area, the appropriate unit or sub-unit shall be square yard or square feet with multiples of 10.
   e. For the purposes of this regulation bulk tea and tea bags shall be considered as two different commodities.
3. Cost-per-unit information when followed shall be displayed in one of the following manners:
   a. On each package by means of a sticker, stamp, sign, label or tag;
   b. On the shelf by means of a sticker, stamp, sign, label or tag;
   c. On a sign clearly and conspicuously displayed as near as practicable to all items to which it refers.
4. The units used for cost-per-unit information shall be in the same unit or appropriate sub-unit as the primary declaration on the item.
5. The same unit or measure or appropriate sub-unit shall be used for all brands and sizes of similar type products with like quantity declarations.
6. The unit price information shall be expressed at least to the nearest tenth of one cent when less than one dollar and to the nearest cent when one dollar or more.

C. Exemptions
1. Any product offered for sale, the net quantity of which is less than one ounce or one fluid ounce or the total retail price of which does not exceed fifty cents is exempt from the provisions of this rule.
2. Any product offered for sale in only one brand and in only one size is exempt from the provisions of this rule.
3. In-house bakery products, if physically segregated from similar products of other producers, are exempt from the requirements of this regulation.
4. Gourmet or specialty products, if physically segregated from other products of similar generic types, are exempt from the requirements of this regulation.

R20-2-313 Retail Sale Price Representation

A. Definitions
1. "Cents-off representation" means any printed matter consisting of the words "cents off" or words of similar import, placed on or adjacent to any consumer package, stating or representing, by implication, that it is being offered for sale at a price lower than the ordinary and customary retail sale price.
2. "Economy size" means any printed matter consisting of words "economy size" or words of similar import placed on or adjacent to any consumer commodity, stating or representing, directly or by implication, that a retail sale price advantage is accorded the purchaser by reason of the size of that package or the quantity of its contents.
3. "Ordinary", "customary" and "regular", when used with the term "price", mean the price at which a consumer commodity has been openly and actively sold in the more recent and regular course of business in a particular market or trade area.
4. "Point-of-sale pricing systems" mean those systems that utilize the universal product code (UPC) scanner system, the stock keeping unit (SKU) system, the price look up (PLU) system, which utilize manually entered

digits, the digital reader system which scans digital codes to determine price, or any other electronic scanning or coding system to determine item price at point of sale.

B. "Cents-off representation"

1. The packager or labeler of a consumer commodity shall not have imprinted thereon a "cents-off representation" unless:
   a. The commodity has been sold previously at an ordinary and customary price in the most recent and regular course of business where the "cents-off" promotion is made;
   b. The commodity so labeled is sold at a reduction from the ordinary and customary price at least equal to the amount of the "cents-off representation" imprinted on the commodity or package; and
   c. Each "cents-off representation", imprinted on the package or label, is limited to a phrase which reflects that the price marked by the retailer actually represents savings in the amount of the "cents-off" the retailer's regular price.
2. No "cents-off" promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to the consumers the represented price reduction.

C. "Economy size"

1. The packager or labeler shall not have imprinted on a consumer commodity an "economy size" representation unless:
   a. At the same time, the same brand of the commodity is offered in at least one additional packaged size or labeled size form;
   b. It is the only packaged or labeled size of that brand of commodity labeled with an "economy size" representation to be offered; and
   c. The commodity labeled with an "economy size" representation is sold at a price per unit of weight, volume, measure or count which is reduced from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.
2. No "economy size" package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception, e.g., where the retailer charges a price which does not pass on to the consumer the reduction in cost per unit initially granted.

D. When point-of-sale pricing is utilized, a price shall be displayed in Arabic numerals in the immediate area where the commodity is displayed for sale and shall comply with the following:

1. Numerals shall be no less than 3/8 inch in height, in bold print, and legible and visible at all times.
2. When displayed on shelves or containers 18 inches or less from the floor, such price tag or label shall face the aisle and be tilted between 15 and 45 degrees away from vertical.

E. When point-of-sale pricing is not utilized, each item for sale shall bear on the outside of the package a clear declaration of price in addition to the price labeling requirements of R20-2-23(D)(1) and (2).

ARTICLE 4 METHOD OF SALE OF COMMODITIES

R20-2-401 Meat, Poultry and Seafood

A. Application

1. Meat, poultry and seafood shall be sold by weight.
2. In the case of ready-to-cook, stuffed poultry products, the label must show the total net weight of the combined product and the net weight of the poultry.
3. When meat, poultry, or seafood are combined with some other food element to form a distinctive food product, the quantity representation may be in terms of the total weight of the product. A quantity representation need not be made for each item.

B. Exemptions. The following foods are exempt from the above requirements, since they may be sold by weight, measure or count:

1. Shellfish;
2. Items sold for consumption on the premises;
3. Items sold as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the vendor's premises;
4. Items sold as part of a sandwich.

R20-2-402 Milk and Milk Products

A. All fluid milk products, including but not limited to milk, low fat milk, skim milk, cultured milk and cream shall be packed for retail sale:

1. In units of inch/pound measure:
   a. 1 gill (although packages of less than 1 gill are permitted),
   b. ½ liquid pint,
   c. 10 fluid ounces,
   d. 1 liquid pint,
   e. 1 liquid quart,
   f. ½ gallon,
   g. 1 gallon,
   h. 1 ½ gallons, or
   I. In multiples of 1 gallon; or
2. In the metric equivalents of the above; or
3. In units of metric measure:
   a. 125 milliliters (although packages of less than 100 milliliters are permitted),
   b. 250 milliliters,
   c. 500 milliliters,
   d. 1 liter, or
   e. Multiples of 1 liter.

B. Milk products which are solid, semi-solid, viscous or a mixture of solid and liquid

1. Cottage cheese, cottage cheese products and other milk products which are solid, semi-solid, viscous or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the U.S. Public Health Service, as amended, shall be sold in terms of net weight; however,
2. Sour cream and yogurt shall be packaged for retail sale only in units of:
   a. Whole ounce increments; or
   b. The metric equivalent of the above; or
   c. 25 gram increments.

C. Butter -- see R20-2-403(D).

R20-2-403 Miscellaneous Food Commodities

A. Definition

1. "Stale or day-old bread" means bread past its pull date.
2. "Pull date" -- see R20-2-21(A)(4).

B. Berries and small fruits

1. These products shall be offered for sale and sold by weight or by measure in open containers having capacities of:
   a. Units of inch/pound measure -- ½ dry pint, 1 dry pint, 1 dry quart and multiples of dry pints or dry quarts; or
   b. The metric equivalents of the above; or
   c. Units of metric measure -- 250 milliliters, 500 milliliters or 1 liter.
2. When sold by measure, the containers shall not be considered to be packages for labeling purposes.

C. Bread. Each loaf of bread and each unit of a twin or multiple loaf offered for sale or sold, shall weigh:
1. In inch/pound measure -- ½, 1 and 1 ½ pounds or multiples of one pound; or
2. In the metric equivalents of the above; or
3. In metric measure -- 250, 500, and 750 grams or in multiples of 500 grams.

D. Butter, oleomargarine and margarine shall be offered for sale and sold by weight only in:
1. Inch/pound units of 1/4, ½ or 1 pound or multiples of one pound; or
2. In the metric equivalents of the above; or
3. In metric units of 125, 250, 500 grams or multiples of 500 grams.

E. Wheat flour, whole wheat flour, graham flour, self rising flour, phosphated wheat flour, bromated flour, enriched flour, corn flour, corn meal and hominy grits, whether enriched or not, if packaged, shall be offered for sale and sold by weight only:
1. In inch/pound units of 2, 5, 10, 25, 50 or 100 pounds; or
2. In the metric equivalents of the above; or
3. In metric units of 1, 2.5, 5, 10, 25 and 50 kilograms.

F. Pickles
1. The declaration of net quantity of contents on bottles of pickles or pickle products, including relishes, shall be expressed in terms of fluid ounces.
2. Whole pickles in a transparent wrapping may be declared by count.
3. Sales of pickles from bulk may be by count.

G. Exemptions
1. Biscuits, buns, specialty breads or rolls are exempt from the provisions of R20-2-403© of this regulation.
2. "Day old" or stale bread, sold and expressly represented as such at the time of sale, is exempt from the provisions of R20-2-403© of this regulation. Moreover, the wrappers of such items shall not be considered as packages for labeling purposes.

R20-2-404 Lumber

A. Definitions
1. "Dressed" (surfaced lumber) means lumber that has been dressed (or surfaced) for the purpose of attaining smoothness of surface and uniformity of size.
2. "Boards" means lumber 1 1/4 inches or less in actual thickness and 1 ½ inches or more in actual width. Boards less than 5 ½ inches in actual width may be classified as strips.
3. "Timbers" means lumber 4 ½ inches or more in least actual dimensions. Timber may be classified by such terms as: "beams", "stringers", "posts", "caps", "sills", "girders" or "purlins".
4. "Dimension lumber" means lumber from 1 ½ inches to, but not exceeding, 4 ½ inches in actual thickness and 1 ½ inches or more in actual width. Dimension lumber may be classified as: "framing", "joists", "planks", "rafters", "studs", "small timbers", etc.
5. "Rough lumber" means lumber that has not been dressed but which has been sawed, edged and trimmed at least to the extent of showing saw marks in the wood on the 4 longitudinal surfaces of each piece for its overall length.
6. "Matched lumber" means lumber that has been worked with a tongue on one edge of each piece and a groove on the opposite edge to provide a close tongue and groove joint by fitting two pieces together, and when end matched, the tongue and groove are worked in the ends also.
7. "Patterned lumber" means lumber that is shaped to a pattern or to a molded form, in addition to being dressed, matched, or shiplapped or any combination of these workings.
8. "Shiplapped lumber" means lumber that has been worked or rabbeted on both edges of each piece to provide a close lapped joint by fitting two pieces together.
9. "Grade" means the commercial designation assigned to lumber meeting specifications established by a nationally recognized grade rule writing organization.
10. "Species" is the commercial name assigned to a species of tree.
11. "Species group" means the commercial name assigned to two or more individual species having similar characteristics.
12. "Representation" means any advertisement, offering, invoice or the like that pertains to the sale of lumber.
13. "Minimum dressed sizes" (width and thickness) means the standardized width and thickness at which lumber is dressed when manufactured in accordance with the U.S. Department of Commerce Voluntary Product Standard 20-70", "American Softwood Lumber Standard", and regional grading rules conforming to VPS 20-70.

B. Application
1. This section applies to softwood boards, timbers, and dimension lumber that have been dressed on four sides.
2. Minimum standard dressed sizes at the time of manufacture for both unseasoned (green) and dry lumber (as published by the U.S. Department of Commerce in Voluntary Product Standard 20-70) shall be as set forth in the following table:

Minimum Standard Dressed Sizes of Lumber

Product Classification	Minimum Dressed Sizes (see note 2) Unseasoned INCHES	Dry INCHES
Dimension lumber		
2 x 4	1 9/16 x 3 9/16	1 ½ x 3 ½
2 x 6	1 9/16 x 5 5/8	1 ½ x 5 ½
2 x 8	1 9/16 x 7 ½	1 ½ x 7 1/4
2 x 10	1 9/16 x 9 ½	1 ½ x 9 1/4
2 x 12 (see note 1)	1 9/16 x 11 ½	1 ½ x 11 1/4
Board lumber		
1 x 4	25/32 x 3 9/16	3/4 x 3 ½
1 x 6	25/32 x 5 5/8	3/4 x 5 ½
1 x 8	25/32 x 7 ½	3/4 x 7 1/4
1 x 10	25/32 x 9 ½	3/4 x 9 1/4
1 x 12	25/32 x 11 ½	3/4 x 11 1/4

Note 1. The dry thicknesses of nominal 3" and 4" lumber are 2 ½ and 3 ½; unseasoned thicknesses are 2 9/16 and 3 9/16. Widths for these thicknesses are the same as shown above.

Note 2. Voluntary Product Standard 20-70 defines dry lumber as being 19 percent or less in moisture content and unseasoned lumber as being over 19 percent moisture content. The size of lumber changes approximately 1 percent for each 4 percent change in moisture content. Lumber stabilizes at approximately 15 percent moisture content under normal use conditions.

3. Representations shall include a declaration of identity that specifies the trade or grades, species or species group, and whether the lumber is unseasoned (green) or dry.
4. Representations shall be in terms of:
   a. The number of pieces;
   b. The minimum dressed width and thickness; and
   c. The length of individual pieces of the lineal footage, except that:
      i. The use of nominal dimensions shall be allowed when used in conjunction with the required minimum dressed sizes and actual length;
      ii. With respect to all invoices, a table of minimum dressed sizes may appear on the reverse side of the invoice, so long as appropriate reference to the table is prominently and conspicuously shown on the face of the invoice.
      iii. Any dimensions required by this Section may be expressed in terms of its conventional metric measure.

C. Exemption. Rough lumber and lumber that has been matched, patterned or shiplapped, or lumber manufactured or joined so as to have changed the form of its identity (such as individual, assembled or packaged millwork items), are exempt from the provisions of this regulation.

R20-2-405 Roofing and Roofing Materials

A. Definitions
   1. "Square", for the purposes of this regulation, means the quantity of roofing or roofing material that, when applied according to directions or instructions of the manufacturer, will cover an area of 100 square feet, exclusive of side laps or side joints; provided that in the case of roofing or roofing materials of corrugated design, the side lap or side joint shall be one full corrugation.
   2. "Square foot", for the purposes of this regulation, means the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover 1 square foot (144 square inches) exclusive of side laps or side joints.
   3. "Square meter", for the purposes of this regulation, means the quantity of roofing or roofing material that, when applied according to directions or instructions of the manufacturer, will cover 1 square meter, exclusive of side laps or side joints.
B. Roofing and roofing material shall be sold either by the square, square foot or square meter, or by count.
C. When the declaration of quantity on a package of roofing or roofing material contains the term "square", it shall include, plainly and conspicuously, a numerical definition of the term "square"; for example: "One square covers 100 square feet of roof area".
D. Common fraction. The use of the common fraction 1/3 is specifically authorized in the quantity statement on a package of roofing or roofing material when, and only when, it is used as the common fraction of the "square".
E. Quantity statement
   1. The primary declaration shall be only in terms of:
      a. Inch/pound measure -- either squares or square feet;
      b. Metric measure -- square meters.
   2. There is no prohibition against the use of supplementary quantity declarations, such as shingle dimensions, but in no case shall the commodity be sold by weight.
   3. The use of numerical descriptions for rolls of felt roofing material may continue to be used.

R20-2-406 Peat and Peat Moss

A. Definition. "Peat and peat moss" means organic matter of geological origin, excluding coal and lignite, originating principally from dead vegetative remains through the agency of water in the absence of air and occurring in a bog, swampland or marsh, and containing an ash content not exceeding 25 percent on a dry weight basis (dried in an oven at 221°F [105°C] until no further weight loss can be determined).
B. The declaration of quantity of peat or peat moss shall be expressed in weight units or in cubic measure.
C. Weight units. The commodity shall be offered for sale and sold only:
   1. In inch/pound units of 3, 10, 20, 40 and 50 pounds; or
   2. In metric units of 1, 2, 5, 10 and 20 kilograms.
D. Cubic measure
   1. Peat and peat moss, sold in terms of cubic measure, shall be offered and sold only in volumes per R20-2-406(C)(1) or R20-2-406(C)(2) above.
   2. Compressed cubic measure. If the commodity is labeled in terms of compressed cubic measurement, the quantity declaration shall represent the quantity in the compressed state.
   3. The volumes shall be expressed in terms of:
      a. Inch/pound volumes of 0.2, 0.3, 0.5, 0.7, 1, 2, 4, 5.5 and 6 cubic feet; or
      b. In the metric equivalents of the above.

R20-2-407 Prefabricated Utility Buildings

A. Prefabricated utility buildings shall be offered for retail sale on the basis of usable inside space as follows:
   1. Length -- measured from the inside surface of the wall panels at the base;
   2. Width -- measured from the inside surface of the wall panels at the base;
   3. Height -- measured from the base to the top of the shortest wall panel.
B. The declaration in units shall be:
   1. In inch/pound units to the nearest inch; or
   2. In metric units to the nearest 0.01 meter.
C. Supplemental declaration. If total usable inside space is declared in a supplemental declaration, it shall be to the nearest cubic decimeter or cubic foot.

R20-2-408 Fireplace and Stove Wood

A. Definitions
   1. "Fireplace and stove wood" means, for the purposes of this regulation, any kindling, logs, boards, timbers, or other wood, natural or processed, split or not split, advertised, offered for sale or sold as fuel.
   2. "Cord" means, for the purposes of this regulation, the amount of wood which is contained in a space of 128 cubic feet (usually 4 ft x 4 ft x 8 ft) when the wood is ranked and well stowed.
   3. "Ranked and well stowed" means, for the purposes of this regulation, that pieces of wood are placed in a line or a row, with individual pieces touching and parallel to each other, and stacked in a compact manner.

B. Application
1. Declaration of quantity
a. Bulk sale. Fireplace and stove wood shall be offered for sale and sold only by the cord or fractional parts of the cord.
b. Pre-packaged wood. Pre-packaged wood, natural and processed, shall be sold either by weight or by the count.
c. Single logs. Single logs, natural or processed, shall be sold by weight.
2. Prohibited terms. The terms "face cord", or "rack", "pile", "truck load", or terms of similar import shall not be used to offer or to sell wood for use as fuel.

C. Exemption. Bulk industrial scrap lumber, sold on the premises where generated for use as fireplace and stove wood, is exempt from the provisions of this regulation.

R20-2-409 Hay, Coal and Other Bulk Commodities

A. Hay
1. Hay shall be offered for sale and sold by weight for quantities greater than 1 ton avoirdupois or 1,000 kilograms.
2. Quantities less than 1 ton avoirdupois or 1,000 kilograms may be sold by the bale.
3. No person may insert anything in any bale of hay for the purpose of increasing the net weight of any bale or may otherwise adulterate the bale of hay.
4. In cases of sales in excess of 20 dollars, the transaction shall comply with R20-2-409© below.

B. Coal, coke and charcoal
1. These items shall be offered for sale and sold by weight, either in the inch/pound or the metric systems.
2. Any commercial delivery of these fuels, if not in package form, shall meet the requirements of R20-2-409© below.

C. Bulk commodities. Whenever the quantity is determined by the seller, all sales of bulk commodities in packaged form (including, but not limited to, turquoise, silver, coral, grain or heating fuels, such as propane, butane or fuel oil) in excess of 20 dollars shall be accompanied by a delivery ticket containing the following information:
1. The name and address of the vendor and purchaser;
2. The date delivered;
3. The quantity delivered and the quantity upon which the price is based, if this differs from the quantity delivered;
4. The price per unit and the total price; and
5. The count of individually wrapped packages, if more than one.

R20-2-410 Miscellaneous Non-food Items

A. Coatings, such as asphalt paints, plastics and other forms of coating shall be sold in terms of liquid measure.

B. Sealants, such as caulking compounds, glazing compounds and putty shall be sold in terms of weight.

C. Ice shall be offered for sale or sold at retail in terms of weight. If ice is dispensed by vending machine, the machine shall be labeled in accordance with Section R20-2-412 of this Article.

R20-2-411 Vehicle Fluids

A. Definitions
1. "Vehicle fluids" means, but is not limited to, commodities such as antifreeze, automatic transmission fluid, brake fluid and power steering fluid.
2. "Antifreeze" means all substances and preparations intended for use as the cooling medium (or to be added to the cooling liquid) in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.
3. "Automatic transmission fluid" means a product intended for use in a vehicle as either a lubricant, coolant or liquid medium in any type of fluid transmission or in any other type of unit, through which or by which force, energy or power is transferred from a motor vehicle engine to the driving assembly.
4. "Brake fluid" means the fluid intended for use as the liquid medium through which force is transmitted in the hydraulic brake system of a vehicle.
5. "Power steering fluid" means the fluid intended for use in the power assist mechanism for the steering system of a vehicle.

B. Adulteration and misbranding. It shall be unlawful to keep with intent to offer for sale or to sell or to place in use adulterated or misbranded vehicle fluids.
1. Adulterated vehicle fluids. A vehicle fluid shall be considered to be adulterated:
a. If it consists in whole or in part of any substance which will render it injurious to the system in which it is intended to be used; or
b. Will make the operation of the system dangerous to the user; or
c. If its strength, quality or purity falls below the standards of strength, quality or purity under which it is sold.
2. Misbranded vehicle fluids. A vehicle fluid shall be considered to be misbranded:
a. If its labeling is false or misleading in any particular; or
b. If in package form it does not bear a label containing the name and place of business of the manufacturer or distributor; and
c. An accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

C. Additives. Any material used, offered for sale or sold as an additive to, or to be used in mix with, any vehicle fluid shall be compatible with that product.

R20-2-412 Vending Machines

A. All vending machines shall indicate:
1. The product identity;
2. The net quantity; and
3. The name, address and telephone number of the party responsible for the machine.

B. The requirements for product identity and net quantity can be met either by the display of the commodity or by information posted on the outside of the machine.

ARTICLE 5 PUBLIC WEIGHMASTERS

R20-2-501 Public Weighmaster

A. Definitions. The following definitions apply generally to this Article:
1. "Natural person" means an individual human being as opposed to an organization.
2. "Public scale" means a scale used in conjunction with public organization.
3. "Public weighing" means the weighing for hire of property, produce, commodities, or articles (other than those which the weigher or his employer, if any, is either buying or selling), and the issuing of a weight certificate to any person, upon request.
4. "Public weighmaster" – see R20-2-101(B)(9).
5. "Registered service agency" – see R20-2-101(B)(10).

6. "Registered service agent" – see R20-2-101(B)(11).
7. "Scale location" means the physical location of a licensed weighing device.
8. "Seal of authority" means a stamp or press capable of reproducing the official mark of the State Administration of Weights and Measures, signifying that the user of the stamp has the right to issue weight certificates.
9. "Weight certificate" means a document, in a form approved by the Department, issued by a public weighmaster and intended to be accepted as the accurate statement of the weight of the object or objects to which it pertains.

B. Application

1. Duties of a public weighmaster. The public weighmaster:
   a. Shall, unless specifically exempted in writing by the Director or his agents, be available at the scale location and be responsible for its day to day operation and maintenance;
   b. Shall make sure that scales are used properly according to regulations;
   c. Shall accurately and honestly issue weight certificates;
   d. Shall maintain at each scale location, for a minimum of one year, a legible copy of each weight certificate issued by him. These copies shall be open at all reasonable times for inspection by any State Administration of Weights and Measures official.
   e. Shall keep a seal of authority at each scale location and make it available for inspection during all hours of business;
   f. May designate a deputy public weighmaster(s) in the manner prescribed in this regulation and shall share equal responsibility for all acts performed by the deputy(ies).
2. Minimum qualifications for a public weighmaster. The public weighmaster:
   a. Shall be a natural person of at least 18 years of age;
   b. Shall have the ability to operate a scale accurately;
   c. Shall have the ability to properly execute weight certificates.
3. Deputy public weighmaster
   a. The minimum qualifications for a deputy public weighmaster shall be the same as for a public weighmaster.
   b. The Director or his agents must be notified in writing within 5 days of either the designation or the deletion of a deputy public weighmaster.
4. Licensing of a public weighmaster
   a. An individual meeting the qualifications for public weighmaster, as set forth in this regulation, may apply for a license on a form to be supplied by the Department. This form, duly signed by the applicant, shall include a representation or evidence by the applicant that he or she has full knowledge of all appropriate weights and measures laws, rules and regulations.
   b. The application form shall be substantially as follows:

STATE ADMINISTRATION OF WEIGHTS AND MEASURES
PUBLIC WEIGHMASTER – LICENSE APPLICATION
IMPORTANT: READ THE RULES AND REGULATIONS PERTAINING TO PUBLIC WEIGHMASTERING BEFORE COMPLETING THIS APPLICATION (R20-2-501 thru R20-2-505).
PROPER AND ACCURATE COMPLETION OF THIS FORM IS MANDATORY FOR CERTIFICATION AS A PUBLIC WEIGHMASTER.
IF YOU DO NOT UNDERSTAND OR CANNOT COMPLETE ANY PART REQUIRED, CALL FOR CLARIFICATION OR INSTRUCTIONS.
A FEE OF $40 PER PUBLIC WEIGHMASTER MUST ACCOMPANY THIS APPLICATION (SEE R20-2-501(B)(4)(d)). MAKE CHECK PAYABLE TO: STATE ADMINISTRATION OF WEIGHTS AND MEASURES.
PART A: FOR BUSINESS RECEIVING FORM
NAME OF BUSINESS
PHYSICAL ADDRESS
CITY STATE ZIP PHONE
MAILING ADDRESS
CITY STATE ZIP PHONE
PLEASE CHECK ONE:
THE ABOVE IS: Main office, regional office or only location
(Answer part C)**
PART B: HOME OR REGIONAL OFFICE INFORMATION
NOTE: COMPLETE THE INFORMATION BELOW FOR THE OFFICE MOST DIRECTLY RESPONSIBLE FOR YOUR OPERATION IN ARIZONA. THIS MAY BE YOUR HOME OFFICE OR A REGIONAL OFFICE.
NAME OF OWNER, OWNING COMPANY, ETC. Date
MAILING ADDRESS
CITY STATE ZIP PHONE
**NOTE: FOR PART C YOU MUST COMPLETE THE LOCATION INFORMATION FOR EACH WEIGHMASTER STATION THAT YOU DESIRE CERTIFIED.
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PART C: PUBLIC WEIGHMASTER LOCATIONS (see R20-2-502)
NAME OF BUSINESS OR LOCATION
PHYSICAL (STREET) ADDRESS
CITY STATE ZIP PHONE
MAILING ADDRESS
CITY STATE ZIP PHONE
NAME OF PUBLIC WEIGHMASTER DATE
DEPUTY WEIGHMASTER(S) IF ADDITIONAL SPACE IS REQUIRED, USE SEPARATE SHEET
1. 4.
2. 5.
3. 6.
NAME OF SCALE OWNER
ADDRESS CITY STATE ZIP
SCALE DESCRIPTION: PLATFORM SIZE
MFG. SERIAL #
YR MFR. CAPACITY
PUBLIC WEIGHMASTER APPLICANT:
This is to certify that I have full knowledge of the Law and Rules and Regulations and will, upon licensing by the State as public weighmaster, operate in accordance with said Law and Rules.
SIGNATURE (PUBLIC WEIGHMASTER APPLICANT) DATE

~~COMMERCIAL LICENSE HOLDER (IF OTHER THAN PUBLIC WEIGHMASTER) COMPLETE BELOW:~~

~~I , certify that I am the licensee of record of a scale located at Arizona, and I consent to the use of this scale for public weighing by .~~

~~(NAME) SIGNATURE (LICENSE HOLDER) DATE~~

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~~c. An applicant may be required to submit appropriate evidence or reference concerning his or her qualifications and shall be examined regarding his or her competence or qualifications as determined by the Department.~~

~~d. Before the issuance of any license as a public weighmaster, or any renewal thereof, the applicant shall pay an annual fee of $40.00. This fee is supplemental to any other fee required for the licensing of the scale.~~

~~e. The holder of a public weighmaster's license may transfer his license to another scale location within the same company or transfer it to another person within the same company upon written notification to the Department, provided that the person to whom the license is transferred meets the requirements of R20-2-501(B)(2) above.~~

~~f. The Department may suspend, revoke, refuse to renew or deny a public weighmaster's license, if, after the appropriate statutory hearing, the Director or his agent has determined that the individual does not have the ability to weigh accurately; does not have the reliability to make correct weight certificates; and/or has been found, at previous administrative proceedings of the State Administration of Weights and Measures, to have violated, or has been convicted in any court of competent jurisdiction of violating, any provision of A.R.S. Title 41, Chapter 15, or any of the rules or regulations promulgated thereunder.~~

~~g. No scale may be operated for public weighing unless a license has been issued to a public weighmaster to operate that scale.~~

~~5. Malfeasance by a public weighmaster means;~~

~~a. Falsification of a weight certificate;~~

~~b. Delegation of his authority, except as provided by these regulations;~~

~~c. Improper use of his seal of authority;~~

~~d. Presigning certificates for later use;~~

~~e. Making changes or alterations on weight certificates; or (If an error is made, the weight certificate shall be voided and maintained and a new one issued.)~~

~~f. Using for public weighing a scale that is not properly licensed.~~

~~C. Exemptions~~

~~1. A person weighing property, livestock or commodities that he or his employer is either buying or selling for his own account shall not obtain a license as a public weighmaster.~~

~~2. A person weighing property, livestock or commodities in conjunction with or on behalf of a publicly sponsored or nonprofit organization, sponsored exposition, or fair or show event shall not obtain a license as a public weighmaster.~~

R20-2-501 Qualifications; License and Renewal Application Process

A. A public weighmaster shall have the following minimum qualifications:
   1. Be a person at least 18 years old;
   2. Be able to operate a scale accurately; and
   3. Be able to properly execute weight certificates.

B. A deputy public weighmaster shall have the same minimum qualifications as a public weighmaster. A public weighmaster who designates a deputy public weighmaster shall notify the Department in writing within 5 days of designating a deputy. A deputy shall not perform the duties of a deputy public weighmaster until the deputy has passed the written weighmaster exam administered by the Department.

C. An individual meeting the qualifications for public weighmaster, as set forth in this section, may apply for a license on a form supplied by the Department.
   1. The application form may require:
      a. The applicant's name, address, and telephone number;
      b. A representation by the applicant that the applicant knows and understands all applicable weights and measures laws and rules;
      c. The name, address, and telephone number for each location of the applicant's business;
      d. The name, address, and telephone number of each of the applicant's public weighmaster locations;
      e. The name of each deputy public weighmaster;
      f. The name and address of the scale owner;
      g. The scale description; and
      h. The applicant's signature.
   2. Applicants may be required to submit evidence of their qualifications and shall be examined regarding their competence or qualifications.

D. Before the Department issues any license or renewal of a public weighmaster license, the applicant shall pay any required fees and provide any information required by the Department in A.R.S. § Title 41, Chapter 15, or this Article.

R20-2-502 Duties

A public weighmaster shall:
   1. Be available at the scale location and responsible for its daily operation and maintenance, unless specifically exempted in writing by the Department;
   2. Use scales according to applicable laws and rules; and
   3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster.

R20-2-503 Grounds for Denying License or Renewal; and Disciplinary Action

A. The Department may deny a weighmaster license for any of the following reasons:
   1. Providing false or misleading information;
   2. Failing to meet the requirements stated in this Article; or
   3. Any of the reasons stated in subsection (B)(1) through (9).

B. The Department may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Department has determined that the applicant:
   1. Does not have the ability to weigh accurately;
   2. Has not correctly made weight certificates;
   3. Has been found to have violated any provision of A.R.S. Title 41, Chapter 15, or this Chapter;
   4. Has falsified a weight certificate;

5. Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

~~R20-2-502~~ R20-2-504Scales and Vehicle Weighing

A. ~~Scales. General~~
   ~~1.~~ When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.

~~2~~B. The public weighmaster shall not use a scale to weigh a load~~, the weight of which~~ that exceeds the normal or rated capacity of the scale.

~~3~~C. The owner or user ~~accuracy~~ of ~~the~~ a weighing device used by a public weighmaster ~~is the responsibility of the owner/user~~ shall comply with ~~as set forth in National Bureau of Standards~~ Handbook 44 ~~(as adopted by the National Conference on Weights and Measures)~~.

D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.

~~4~~E. ~~Each scale location, as determined by the Director or his agents, shall be separately licensed and treated independently for the purpose of these rules and regulations.~~ The Department shall separately license and regulate each scale location.

~~B~~F. ~~Weighing vehicles~~
   ~~1.~~ ~~When the gross or tare weight of~~ A weighmaster shall weigh any vehicle or combination of vehicles ~~is to be determined, the weighing shall be performed upon~~ on a scale having a platform ~~of sufficient size to~~ that fully ~~accommodate~~ accommodates the vehicle or combination of vehicles as one ~~entire~~ unit.

~~2~~G. If a combination of vehicles ~~must be broken up~~ is divided into separate units ~~in order~~ to be weighed, each ~~such~~ separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

~~R20-2-503~~ R20-2-505Weight Certificates

A. ~~Execution of weight certificates~~
   ~~1.~~ In issuing a weight certificate, a public weighmaster may enter only those weight values ~~which either he or his~~ that the weighmaster or deputy weighmaster has accurately and personally determined.

~~2~~B. A public weighmaster may not make any entries on a weight certificate~~,~~ issued by another person.

~~3~~C. ~~The weighmaster and/or his deputy, in signing the weight certificate, shall be held responsible for the correctness~~ By signing the weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.

~~4~~D. A weight certificate is valid only when properly signed and sealed by the issuing weighmaster or ~~his~~ the weighmaster's deputy.

E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.

~~B~~F. ~~Required entries~~
   ~~1.~~ ~~The~~ A weight certificate shall state:
   ~~a.~~ 1. The date of issuance;
   ~~b.~~ 2. The kind of property, produce, commodity~~,~~ or article weighed;
   ~~c.~~ 3. The name of the declared owner~~,~~ ~~or~~ agent~~,~~ or ~~of the~~ consignee of the material weighed;
   ~~d.~~ 4. The accurate weight of the material weighed and counted~~, as appropriate~~;
   ~~e.~~ 5. The means by which the material is being transported at the time it is weighed; ~~and,~~
   ~~f.~~ 6. ~~When appropriate, an~~ An identification number of the transporting unit, ~~such as~~ including a ~~truck/trailer~~ license number~~.~~; and
   ~~2.~~ 7. The ~~weight certificate shall also contain the~~ following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the following described merchandise was weighed and counted or measured by a public or deputy weighmaster, and when properly signed and sealed, shall be prima facie evidence of the accuracy of the weight shown as prescribed by law".

~~C.~~ ~~Disposition of copies of weight certificates~~
   ~~1.~~ ~~A licensed public weighmaster shall keep and maintain for a minimum of one year a legible copy of each weight certificate issued.~~
   ~~2.~~ ~~These copies shall be available at the scale location at all reasonable times for inspection by a Department official.~~
   ~~3.~~ ~~These weight certificates shall be consecutively numbered and shall be filed numerically. Any other filing system must be approved by the Department.~~

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of 1 year. A weighmaster also shall assure that weight certificates are consecutively numbered and filed numerically. A weighmaster shall not use another filing system without Department approval.

~~R20-2-504~~ R20-2-506Seal of Authority

A. ~~The~~ A weighmaster shall obtain the seal for the certification of weight certificates ~~shall be obtained~~ at cost through the Department.

B. The Department shall assign a number to a seal ~~shall bear a number assigned by the Department~~ identifying the public weighmaster and the specific location for which ~~it has been~~ the seal is issued.

C. ~~The~~ A seal ~~shall be~~ is the property of the state. ~~and~~ A weighmaster shall ~~be surrendered~~ surrender a seal to the Department within 30 days after ~~an individual's termination of status as~~ the weighmaster no longer operates as a licensed public weighmaster.

D. A public weighmaster shall have ~~one~~ 1 seal for use at each scale location.

E. ~~The~~ A seal shall be accessible to the weighmaster and ~~his~~ authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.

F. ~~The seal shall be available during all business hours for inspection by any official of the State Administration of Weights and Measures.~~ A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Department during all business hours.

~~R20-2-505~~ R20-2-507Prohibited Acts

A. ~~Application. No~~ A person ~~may~~ shall not:
   ~~1.~~ ~~Request a public weighmaster or any person employed by him or her to weigh, measure, or count any property, produce or commodity falsely or incorrectly;~~
   ~~2.~~ ~~Request a false or incorrect weight certificate;~~

3.1. Issue a weight certificate ~~when he is not~~ without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;

4.2. Procure, print, or cause to be printed any public weighmaster weight certificate~~, if she or he is not~~ without being a licensed public weighmaster or a person authorized to act for a public weighmaster;

5.3. Possess unfilled or unused public weighmaster weight certificate forms~~, if he or she is not~~ without being a licensed public weighmaster or a person ~~employed by~~ authorized to act for a public weighmaster;

6.4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;

7.5. Present ~~for payment~~ a certificate ~~made false~~ for payment falsified by the insertion of any weight, measure, ~~and~~/or count not determined by the issuing weighmaster;

8.6. ~~Assume,~~ Use without authorization~~,~~ the title "licensed public weighmaster"~~,~~ or any similar title ~~of similar import~~;

9.7. ~~Perform the duties or acts to be performed by a licensed public weighmaster~~ Represent oneself to be a public weighmaster without holding a license issued by the Department;

~~10. Hold himself or herself out as a licensed public weighmaster;~~

~~11.~~8. Issue any certified weight certificate ~~for which a fee is charged~~ without holding a license issued by the Department; or

~~12.~~9. Engage in ~~the full-time or part-time business of~~ public weighing~~, unless he or she holds~~ without holding a valid license as a public weighmaster, ~~or deputy public weighmaster~~, or ~~acts~~ acting under the authority ~~provided by such a license~~ of a licensed public weighmaster.

10. Use an unlicensed scale in the performance of public weighmaster duties.

11. Operate a scale for public weighing unless that person is licensed as a public weighmaster.

B. ~~Exemptions~~

~~1. A person engaged in the business of printing weight certificate forms is exempt from the prohibitions specified in R20-2-505(A)(4) above.~~

~~2.~~ ~~A person~~ People engaged in the business of printing weight certificate forms, ~~or his~~ their representatives, and the Department ~~officials~~ are exempt from the ~~prohibition~~ prohibitions specified in subsections (A)(2) and (A)(3) ~~R20-2-505(A)(5) above~~.

ARTICLE 6 REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R20-2-601 ~~Registration of Service Representatives and Institution of Reciprocal Agreements~~ Qualifications; License and Renewal Application Process; and Reciprocal Agreements

~~A. Definitions. The following definitions apply generally throughout this Article.~~

~~1. "Adequate weights" for a large capacity scale shall be deemed to be 10,000 pounds of test weights or one-quarter of the capacity of the scale, whichever is less.~~

~~2. "Certificate of registration" means a license, granted by the Department, which allows the individual or agency holding it to present himself or itself as a registered service agent or a registered service agency.~~

~~3. "Certified prover" means a calibrated device, traceable to the National Bureau of Standards, used for measuring liquid volume.~~

~~4. "Commercial weighing device" see R20-2-101(B)(2).~~

~~5. "Placed in service" means the activity of inspecting and testing newly installed or recently repaired devices intended for commercial use.~~

~~6. "Placed-In-Service Report" means the form which is filled out and sent to the State Administration of Weights and Measures by a registered service representative after that representative has placed a commercial device in service.~~

~~7. "Registered service agency" see R20-2-101(B)(10).~~

~~8. "Registered service agent" see R20-2-101(B)(11).~~

~~B~~A. ~~Application for registered service agents and agencies~~ Registered Service Agency

1. The Department shall accept applications for ~~registration~~ licensure of an ~~individual and/or~~ agency that provides ~~acceptable~~ evidence that:
   a. ~~the service agent in question~~ The applicant's representatives ~~has~~ have a thorough ~~working~~ knowledge of all appropriate ~~weights and measures~~ laws~~, as well as~~ and ~~rules and regulations~~ this Chapter;
   b. The applicant possesses the necessary standards and testing equipment to service commercial devices or that the applicant has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
   c. It will operate in accordance with appropriate laws and this Chapter.
2. The Department may require an applicant to:
   ~~1.~~a. Submit evidence or references concerning qualifications; and
   ~~2.~~b. ~~Take a competency examination~~ Have at least 1 of its representatives pass a competency examination, before issuing a license.

~~2.~~ 3. ~~Forms.~~ The application forms for registered service ~~agents and registered service~~ agencies ~~are substantially as follows~~ may require the following information:
   a. Name, address, telephone, and fascimile numbers;
   b. Previous and current license information from other states;
   c. Types of devices serviced, repaired, or installed;
   d. A list of all of the applicant's devices with corresponding serial or identification numbers;
   e. Branch office information;
   f. Names of service representatives and their experience with other agencies or states;
   g. License and disciplinary history; and
   h. Signatures of the applicant's agent or its representatives.

B. Registered Service Representative

1. The Department shall accept applications for licensure of a representative that provides evidence that:
   a. The applicant has a thorough knowledge of all appropriate laws and this Chapter;
   b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service commercial devices; and
   c. The applicant will operate in accordance with appropriate laws and this Chapter.
2. The Department may require an applicant to submit evidence or references concerning qualifications.
3. The applicant shall pass a competency examination before being issued a license.

4. The application forms for registered service representatives may require the following information:
   a. Name, address, telephone, and facsimile numbers;
   b. Previous and current license information from other states;
   c. Types of devices serviced, repaired, or installed;
   d. Experience with other agencies or states;
   e. License and disciplinary history; and
   f. Signature.

~~STATE ADMINISTRATION OF WEIGHTS AND MEASURES~~
~~REGISTERED SERVICE AGENT APPLICATION FORM~~
~~Please print or type~~
~~1. NAME _____~~
~~MAILING ADDRESS _____~~
~~CITY _____ STATE _____ ZIP _____~~
~~STREET ADDRESS _____ PHONE _____~~
~~CITY _____ STATE _____ ZIP _____~~
~~2. EMPLOYED BY:~~
~~NAME _____~~
~~MAILING ADDRESS _____ PHONE _____~~
~~CITY _____ STATE _____ ZIP _____~~
~~Note: To qualify as a registered service agent, the applicant must be employed by or hold a license from a registered service agency and pass a written examination with a score of at least 70%.~~
~~3. TYPE OF DEVICES SERVICED:~~
~~_____~~
~~_____~~

~~4. The registration fee for a registered service agent is $4.00 annually. Make check payable to: State Administration of Weights and Measures.~~
~~5. This is to certify that I have the necessary competence to service the equipment listed and have full knowledge of the applicable law, A.R.S. § 41-2094, and the rules and regulations, R20-2-601 thru R20-2-604. I certify that I will operate in accordance with this law and these rules.~~
~~I also understand that I must only use standards that have been certified according to R20-2-603.~~
~~Date _____ Signature _____~~

~~FOR WEIGHTS AND MEASURES USE ONLY~~

~~I hereby certify that the above named applicant has passed the written examination for registered service agent.~~
~~Date _____ Program Manager _____~~
~~STATE ADMINISTRATION OF WEIGHTS AND MEASURES~~
~~REGISTERED SERVICE AGENCY APPLICATION~~

~~A registered service agency will be authorized to employ registered service agents. Licensed service agents will be authorized to place new devices in service and to restore to service a weighing or measuring device that has been officially rejected by the Department.~~
~~THE REGISTRATION FEE FOR AN AGENCY IS $20.00 ANNUALLY. PLEASE MAKE CHECK PAYABLE TO: STATE ADMINISTRATION OF WEIGHTS AND MEASURES~~
~~PART A: APPLICANT AGENCY INFORMATION (Please print or type)~~
~~#1: Applicant Agency Location Information~~
~~BUSINESS NAME~~ ~~MAILING ADDRESS~~
~~PHONE~~
~~CITY STATE ZIP~~
~~CHIEF BRANCH OFFICE OR MANAGER PHONE~~
~~NOTE: Businesses with multiple branches must complete an agency application for each location doing business in Arizona.~~
~~#2: Home or Regional Office if #1 is a Branch~~
~~BUSINESS NAME~~
~~MAILING ADDRESS~~
~~CITY STATE ZIP~~
~~PART B: SERVICE AGENTS (Please print or type)~~
~~#3: List all persons currently in your employ who are making application as registered service agents.~~

~~PART C: REGISTERED SERVICE AGENCY APPLICATION [reverse side]~~
~~Are you or your company now, or have you or your company ever been, licensed as a registered service agency or registered service agent in the state of Arizona or any other state? _____ If "yes", name of state: _____.~~
~~Has your license ever been suspended or revoked? _____.~~
~~QUALIFICATIONS TO SERVICE HEAVY CAPACITY SCALES (see R20-2-602(B)(1))~~
~~No registered service agency or service agent shall be qualified to place in service or remove a "Red" or "Yellow" tag from a heavy capacity scale unless such registered service agency or service agent has adequate certified weights traceable to the National Bureau of Standards.~~
~~PROVER REQUIREMENTS TO CALIBRATE METERING DEVICES (see R20-2-602(B)(2))~~
~~Any registered service agency or service agent who calibrates any metering device shall have a certified prover with minimum capacity to run a one-minute, uninterrupted, normal test draft. With wholesale devices, the minimum capacity required is 50 gallons. With retail motor fuel meters, the minimum capacity is 5 gallons.~~
~~Below, list the types of devices that this agency is qualified to service, repair, and/or install: Please print or type.~~
~~SCALES CAPACITY~~
~~METERS TYPE~~
~~GALLONS PER MINUTE~~
~~Below, list all test standards.~~
~~TEST WEIGHTS WEIGHT TOTAL WEIGHT~~
~~TEST MEASURES VOLUMETOTAL NUMBER~~
~~DATE LAST CERTIFIED WHERE CERTI-~~

~~FIED~~

~~APPLICANT AGENCY: Please read and sign below.~~

~~I understand that all registered service agents must pass a written examination before a license can be issued. I also understand that only standards that have been certified according to R20-2-603(B) can be used to service commercial devices, and also that my standards must be certified or I must submit a certificate from a recognized laboratory before a license can be issued.~~

~~I certify that we possess the necessary standards and testing equipment to service those devices for which we are requesting registration, and that I have full knowledge of the appropriate laws and regulations, specifically A.R.S. § 41-2094 and R20-2-601 thru R20-2-604, and I will operate in accordance with this law and the rules and regulations.~~

~~CHIEFBRANCHOFFICEORMANAGER~~
~~TITLE DATE~~

~~C. Reciprocal agreements~~

~~1. The Department may enter into informal reciprocal written agreements with any other state or states that has or have similar registration regulations concerning service agencies and individuals.~~

~~2. Under such agreements, the registered service agent and the registered service agencies of the states party to the reciprocal agreement are granted full reciprocal authority.~~

~~3.~~C. ~~In addition, there shall be reciprocal recognition of~~ The Department may accept the certification of standards and testing equipment from any state that has standards traceable to NIST ~~in all states party to agreements as outlined above~~.

R20-2-602 ~~Qualifications and~~ Duties ~~of Registered Service Representatives~~

~~A. Evidence of qualifications. An applicant may be required to:~~

~~1. Submit appropriate evidence or references concerning qualifications; and/or~~

~~2. Take an examination, testing his or her competence or qualifications.~~

~~B.~~A. ~~Requirements~~ Registered Service Agency

1. ~~Requirements to service heavy capacity scales. No registered service agency or service agent shall be qualified to place in service or remove a "Red" or "Yellow" tag from a heavy capacity scale unless such registered agency or agent has adequate certified weights traceable to the National Bureau of Standards.~~

   A registered service agency shall maintain all equipment in accordance with standards traceable to NIST.

2. ~~Prover requirements to calibrate metering devices~~

   ~~a. Any registered service agency or agent who calibrates any metering device shall have a certified prover with minimum capacity to run a one-minute, uninterrupted, normal test draft.~~

   ~~b. With wholesale devices, the minimum capacity required is 50 gallons.~~

   ~~c. With retail motor fuel meters, the minimum capacity is 5 gallons.~~

3. ~~"Placed-In-Service Reports"~~

   ~~a. The Department shall prescribe forms, to be known as "Placed-In-Service Reports", to be used by registered service agencies and agents.~~

2. When using a "Placed In Service Report", a registered service agency shall use a form prescribed by the Department.

~~b. The form shall be substantially as follows:~~

~~STATE ADMINISTRATION OF~~
~~WEIGHTS AND MEASURES~~
~~PLACED-IN-SERVICE REPORT~~

~~NAME OF SERVICE AGENCY~~ _____

~~ADDRESS~~ _____
_____

~~Street City State~~
~~ZIP RSA No~~
~~NAME OF BUSINESS~~ _____
_
~~ADDRESS~~ _____
_____

~~Street City State~~
~~ZIP~~

~~WEIGHING OR MEASURING DEVICES PLACED IN SERVICE OR REPAIRED~~

~~Service Red or New~~
~~Fee Manuf Year~~
~~Yellow Device~~
~~Code Name Serial Number Manuf On-Site Placement~~
~~Tag No. (check)~~
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

~~Remarks~~ _____
_____
_____
_____

~~NOTICE TO DEVICE OWNER: Any new or replacement device must be licensed prior to commercial use.~~
_____
_____

~~Red or Yellow Tags Enclosed if Applicable Date Work Completed Yes No (If No, Explain in Remarks)~~
_____
_____
_____

~~Print Name of Repairman Signature of Repairman~~
_____
_____
_____

~~Original to Weights and Measures~~
~~First copy to Business~~
~~Second copy to RSA~~

~~c. Such forms shall be filled out in triplicate.~~

a. A registered service agency shall fill out a placed-in-service report in triplicate.

~~i.~~ b. Within 7 days after a device is restored to or placed in service, a registered service agency shall mail the original of the properly completed and signed ~~"Placed-In-Service Report"~~ placed-in-service report ~~shall be mailed~~ to the Department.

ii. c. ~~The~~ A registered service agency shall give the duplicate copy of the report ~~shall be given~~ to the owner or operator of the device.

iii. d. ~~The~~ A registered service agency shall retain the triplicate copy of the report ~~shall be retained by the registered service agent or agency~~.

d. e. ~~The "Placed-In-Service Report"~~ A registered service agency shall ~~include~~ assure that the placed-in-service report contains the assigned ~~registration~~ license number of the registered service ~~agent~~ representative who completed the report.

e. f. ~~The "Placed-In-Service Report"~~ A registered service agency shall ensure that the placed-in-service report ~~shall be~~ is completed and signed by the registered service ~~agent~~ representative ~~for~~ noting each rejected device restored to service and ~~for~~ each newly-installed device placed in service.

g. A registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the representative to calibrate the device for each rejected device restored to service and for each newly installed device placed in service.

4. A registered service agency shall have all equipment certified annually.

5. A registered service agency shall not use new equipment until it is certified by a NIST traceable laboratory. A registered service agency shall report any newly acquired equipment or changes in certified equipment to the Department within 10 days of the acquisition or change.

6. A registered service agency shall assure that no employees perform registered service representative duties before being licensed.

~~C. Malfeasance. No registrant shall:~~

~~1. Fraudulently complete or file a "Placed-In-Service Report";~~

~~2. Delegate his authority or responsibility;~~

~~3. Perform any function without appropriate equipment;~~

~~4. Install or place in service any weighing, measuring, metering or counting device unless and until he has satisfied all the requirements of the law and the regulations; or~~

~~5. Leave any device, not in total compliance, without first replacing the "Red" or "Yellow" tag.~~

B. Registered Service Representative

1. A registered service representative shall use standards traceable to NIST.

2. A registered service representative who calibrates any metering device shall use a certified prover to run a 1-minute, uninterrupted, normal test draft, with the following capacity:

a. Wholesale devices - 50 gallons.

b. Retail motor fuel meters - 5 gallons.

3. A registered service representative shall also:

a. Install only commercial devices that meet the requirements of Article 2;

b. Report equipment or devices that do not conform to NIST standards to the user; and

c. Complete Placed-In-Service reports accurately.

R20-2-603 ~~Certification of Registration~~ Grounds for Denying License Issuance and Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. ~~Certificate of registration~~

~~1. No certificate of registration~~ The Department shall not issue a license or renewal ~~may be issued~~ until the applicant pays ~~an annual fee of $20.00 per registered service agency and $4.00 per registered service agent~~ all appropriate fees.

~~2.~~ B. ~~Issuing the certificate~~

~~a.~~ Upon receipt and acceptance of all required documents, fees, and Department certification of standards, ~~and fees,~~ the Department shall issue the ~~applicant~~ agency a ~~certificate of registration~~ license or renewal.

~~b.~~ **C.** The ~~certificate of registration~~ The Department shall include on a license ~~shall include~~ an assigned number, ~~which shall remain~~ that remains effective until either withdrawn by the Department or until it expires. The Department shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.

~~3.~~ **D.** ~~Non-transferability~~

~~a.~~ ~~The license of a registered service agent may not be transferred or reassigned to any other individual. Nor may the service agent transfer it from one agency to another~~

Neither a registered service agency nor a registered service representative shall transfer a license.

~~b. The license of a registered service agency is not transferable to any other legal entity or agent.~~

~~4.~~ **E.** ~~Renewal of license. If a licensee submits an application during the month of December 2 for renewal, together with the required fee, the existing license shall be valid for 30 days following its expiration, or until issuance of the renewal license, whichever occurs first.~~

A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.

F. The Department may deny a license or renewal for any of the following reasons:

1. Providing false or misleading information;
2. Failure to meet annual certification requirements for standards or testing equipment;
3. Failure to meet the requirements stated in this Article; or
4. For any reason that would be grounds for suspension, revocation, or refusal to renew.

~~5.~~ **G.** ~~Denial, suspension, revocation or refusal to renew a license.~~ The Department may ~~deny~~, suspend, revoke, or refuse to renew a license ~~of a registered service agent or service agency; if, after the appropriate statutory hearing, the Director or his agent has determined that~~ the ~~individual or agency~~ applicant is not qualified to perform those ~~acts~~ duties required or has been found ~~at a previous administrative hearing of the Department~~ to have violated~~, or has been convicted in a court of competent jurisdiction of violating,~~ any provision of A.R.S. Title 41, Chapter 15, or ~~the rules or regulations promulgated thereunder~~ or this Chapter.

~~B.~~ **H.** ~~Certification of standards and testing equipment.~~ Every registered service agency and representative shall comply with ~~The~~ the Department's metrology laboratory ~~shall~~ annual schedule ~~the annual~~ for certification of field standards ~~as set forth~~ contained in A.R.S. § 41-2067(F).

R20-2-604 Prohibited Acts

A. ~~No person may request a registered service agent to falsely complete or file any form required by the Department.~~

A person shall not:

~~B.~~ 1. ~~No unregistered person may perform~~ Perform any duty or do any act ~~which these regulations require~~ required to be done by a registered service ~~agent or~~ agency or representative without holding a registered service agent or representative license issued by the Department~~.~~;

~~C.~~ 2. ~~No person may assume~~ Use the title of registered service ~~agent or~~ agency or representative, ~~or~~ any similar title ~~of similar import~~, or hold ~~himself~~ oneself out as a registered service ~~agent~~ agency or representative without a valid ~~registration.~~ license; or

~~D.~~ 3. ~~No person shall remove~~ Remove an official out-of-service, ~~rejection of~~ warning, or unlicensed device tag except as authorized in ~~these regulations~~ this Chapter, or by the Department.

B. A registered service agency or representative shall not:

1. Fraudulently complete or file a Placed-In-Service Report;
2. Delegate authority or responsibility;
3. Perform any function without certified equipment;
4. Install or place in service any commercial device before satisfying all of the statutory and rule requirements; or
5. Leave any location where a device was found not incompliance, without first tagging the device with an out-of-service, warning, or unlicensed device tag.

ARTICLE 8 USED OIL AND USED OIL FUEL

~~R20-2-801~~ ~~Definitions~~

~~The following definitions, and definitions contained in A.R.S. §§ 41-2051 and 49-801, and Article 1 of this Chapter, shall apply to this Article unless the context otherwise requires:~~

~~1. "Clean oil" means oil that has been refined from crude oil and has not been used or contaminated.~~

~~2. "EPA methods" means those laboratory analytical methods contained in the United States Environmental Protection Agency sampling and testing documents incorporated by reference in R20-2-802.~~

~~3. "Generator" means a person who initially creates or produces used oil from clean oil through use or through contamination.~~

~~4. "Hazardous waste" means those materials defined in A.R.S. §41-921 and R18-8-261.~~

~~5. "Outside laboratory" means any used oil or used oil fuel testing~~ laboratory other than the Department laboratory.

~~6. "Person" means, for purposes of this Article, both the plural and the singular, as the case demands, and includes government corporations, states, counties, municipalities, political subdivisions of the state, commissions, interstate bodies, federal facilities, partnerships, trusts, corporations, companies, firms, societies, associations, and individuals.~~

~~7. "Standard Industrial Code number 4911", as cited in A.R.S. § 49-808(B), means a business classified as an electrical utility.~~

~~8. "Standard Industrial Code number 5541", as cited in A.R.S. § 49-802(B), means a business classified as a gasoline service station.~~

~~9. "Standard Industrial Code number 7538", as cited in A.R.S. § 49-802(B), means a business classified as an automotive vehicle repair facility.~~

~~10. "Used oil blending tank" means a tank or container larger than five gallons that is used to mix used oil or used oil fuel.~~

~~11. "Used oil quantity receipt" means a document used pursuant to A.R.S. § 49-804(B)(4) by the transporter of used oil reflecting the amount of used oil collected from a generator or delivered to a transporter, marketer, or burner.~~

~~12. "Used oil receiving tank" means a tank or container larger than five gallons, or a transport vehicle, that is used for receiving or holding used oil or used oil fuel prior to transferring to a blending, storage, or treatment tank.~~

~~13. "Used oil treatment system" means a system used to change the physical and chemical characteristics of a used oil into on specification or off specification used oil fuel.~~

~~14. "Used oil treatment system wastes" means the waste products from a system used to change the physical and chemical characteristics of a used oil into an on specification or off specification used oil fuel.~~

~~15. "Used oil treatment system waste tank" means a container larger than five gallons that is used for the storage of wastes from a used oil treatment system prior to the disposal or other re-use of those waste products.~~

~~16. "Used oil treatment tank" means a container larger than five gallons that is used to process used oils.~~

R20-2-802 Material Incorporated by Reference

~~A. The following material is incorporated herein by reference and is on file with the Office of the Secretary of State. The incorporated material does not include any later amendments or editions. Copies of each of the documents are available from the Department.~~

~~B. Copies of each of the documents are available from the Department.~~

~~1. ASTM D 93-90, published December 1990, Standard Test Methods for Flash Point by Pensky-Martens Closed Tester, reprinted from the Annual Book of ASTM Standards, Copyright ASTM. Copies are available from ASTM, 1916 Race Street, Philadelphia, PA 19103.~~

~~2. ASTM D 4057-88, published January 1989, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, reprinted from the Annual Book of ASTM Standards, Copyright ASTM. Copies are available from ASTM, 1916 Race Street, Philadelphia, PA 19103.~~

~~3. EPA Method 9076 draft, Test Method for Total Chlorine in New and Used Petroleum Products by Oxidative Combustion and Microcoulemetry, dated October 1988. Copies are available from EPA, 401 M Street SW, Washington, DC 20460.~~

~~4. EPA-600/4-81-045, EPA Test Method, The Determination of Polychlorinated Biphenyls in Transformer Fluid and Waste Oils, dated September 1982. Copies are available from EPA, Environmental Monitoring & Support Laboratory, Cincinnati, OH 45268.~~

~~5. EPA SW-846, Third Edition, dated November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA: Laboratory Manual, Physical/Chemical Methods, Chapter Three, Metallic Analytes, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.~~

~~6. EPA Method 7060, Arsenic (Atomic Absorption, Furnace Technique), EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA: Laboratory Manual, Physical Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.~~

~~7. EPA Method 7130, Cadmium (Atomic Absorption, Direct Aspiration), EPA SW-846, Third Edition,~~

November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA: Laboratory Manual, Physical Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.

8. EPA Method 7190, Chromium (Atomic Absorption, Direct Aspiration), EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA: Laboratory Manual, Physical Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
9. EPA Method 7420, Lead (Atomic Absorption, Direct Aspiration), EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IA: Laboratory Manual, Physical Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
10. EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IB: Laboratory Manual, Physical/Chemical Methods, Chapter Four, Organic Analytes, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
11. EPA Method 8240, Gas Chromatography/Mass Spectrometry for Volatile Organics, EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IB: Laboratory Manual, Physical/Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
12. EPA Method 8250, Gas Chromatography/Mass Spectrometry for Semivolatile Organics: Packed Column Technique, EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IB: Laboratory Manual, Physical/Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
13. EPA Method 8270, Gas Chromatography/Mass Spectrometry for Semivolatile Organics: Capillary Column Technique, EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume IB: Laboratory Manual, Physical/Chemical Methods, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.
14. EPA SW-846, Third Edition, November 1986, EPA Test Methods for Evaluating Solid Waste, Volume II: Field Manual, Physical/Chemical Methods, Chapter Nine, Sampling Plan, reproduced by and available from U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.

R20-2-803 Fees

A. A fee of $65 shall be paid to the Department for each sample of used oil or used oil fuel tested to any of the allowable levels to determine whether the used oil or used oil fuel is on-specification, off-specification, or a hazardous waste fuel pursuant to A.R.S. § 49-801(A)(5), and (A)(7) and (B).

B. Failure to pay the fee within 30 days of the original billing date shall result in a late charge of $65 in addition to the fee.

R20-2-804 Inspection Procedures

A. A Department official may sample, inventory, photograph, or videotape any portion of the premises, equipment, vehicle, and used oil or used oil fuel products or review and copy records or documents.

B. The person responsible at the inspection site shall provide and make available to Department officials:
   1. Any equipment, tanks, storage containers, records, and other property and premises related to the blending, burning, collecting, receiving, storing, transporting, or treating of used oil or used oil fuel.
   2. The records and reports from the laboratory analysis of the used oil collected, stored, transported or treated at that location or the manifests and certification, required by A.R.S. § 49-807(B), of the used oil fuel delivered to that or another location by a marketer or transporter.
   3. Any other used oil or used oil fuel quantity receipts or manifests.

C. Transporters of used oil or used oil fuel shall make available to Department officials:
   1. Shipping documents including but not limited to the used oil or used oil fuel manifests and quantity receipts pursuant to A.R.S. § 49-804.; and
   2. The vehicle contents and used oil or used oil fuel products that are being transported to another transporter, a marketer or a burner.

R20-2-805 Sampling Procedures

A. Used oil samples shall be collected in the amounts and by the methods which are specified in the following documents:
   1. ASTM D 4057-88 for testing flash point.
   2. EPA Manual SW-846, EPA Test Methods for Evaluating Solid Waste, Volume II: Field Manual, Physical/Chemical Methods, Chapter Nine, Sampling Plan, and Volume IA: Laboratory Manual, Physical/Chemical Methods, Chapter Three, Metallic Analytes, 3.1 and 3.2 for testing metallics.
   3. EPA Manual SW-846, EPA Test Methods for Evaluating Solid Waste, Volume II: Field Manual, Physical/Chemical Methods, Chapter Nine, Sampling Plan, and EPA-600/4-81-045 for testing Polychlorinated Biphenyls.
   4. EPA Manual SW-846, EPA Test Methods for Evaluating Solid Waste, Volume II: Field Manual, Physical/Chemical Methods, Chapter Nine, Sampling Plan, and EPA Method 9076 for testing total halogens.

B. A Department official may collect used oil samples from any of the following:
   1. Vehicles transporting used oil or used oil fuel.
   2. Tanks and containers larger than five gallons on vehicles transporting used oil or used oil fuel.
   3. Any other tanks or containers that are larger than five gallons and that contain used oil or used oil fuel.
   4. Any location that may contain used oil or used oil fuel products.

C. A Department official shall collect duplicate or split samples of the used oil if requested by the person in charge of the facility being inspected or offering used oil fuel for sale or use. The split sample shall be collected into a container which meets the specifications of EPA SW-846, Sampling Plan, incorporated by reference in R20-2-802, and which is provided by the requestor.

D. Upon request, a receipt shall be issued by a Department official reflecting the amount of used oil drawn for sampling.

E. Burners, generators, marketers, or transporters of used oil or used oil fuel that is transported, stored, used, or offered for

sale in a manner that prevents the safe collection of samples shall be issued an administrative order to prohibit the sale or use of the used oil or used oil fuel until such time as samples can be safely collected.

R20-2-806 Test Methods and Outside Laboratory Test Method Documentation

A. The following laboratory test methods, or applicable approved test methods cited in R20-2-610, shall be utilized for the analysis of the following constituents or properties to certify used oil fuel:
   1. Arsenic EPA method 7060
   2. Cadmium EPA method 7130
   3. Chromium EPA method 7190
   4. Lead EPA method 7420
   5. Polychlorinated Biphenyls or PCBS EPA method 600/4-81-045
   6. Total Halogens EPA method 9076
   7. Flash point ASTM D 93-90

B. The Department shall, upon request, issue certified analytical results of on-specification or off-specification used oil fuels which have been tested by the Department laboratory.

C. Any analytical results of used oil fuel produced by outside laboratories that is submitted to the Department shall be accompanied by a copy of the current environmental laboratory license issued by the Department of Health Services verifying that the facility has been authorized by the Department of Health Services to perform test methods cited in R20-2-806(A) and, if analytical results are to be used for halogen rebuttal purposes, R20-2-807(C), and include a statement documenting:
   1. The specific method utilized to obtain and prepare the product sample for testing; and
   2. The specific method used in the analysis of the sample.

R20-2-807 Halogen Rebuttal Demonstration Procedure

A. If the Department laboratory, through analysis pursuant to R20-2-806(A)(6), presumes that a used oil product has been mixed with halogenated hazardous waste and shall be regulated as a hazardous waste fuel because the total halogen concentration is between 1,000 and 4,000 parts per million, a Department official shall issue an administrative order to prohibit the sale or use of such product as an on-specification or off-specification used oil fuel.

B. The Department's presumption that a used oil product has been mixed with halogenated hazardous waste, based on Department laboratory analysis, may be rebutted.

C. The halogen rebuttal procedure is the method by which a person shall demonstrate, through outside laboratory testing using EPA methods 8240, 8250, or 8270 and company records, that the used oil fuel has not been mixed with any halogenated hazardous waste, and that the resulting total halogen concentration of between 1,000 and 4,000 parts per million is from the normal use of clean oil in the generator's equipment or manufacturing process.

D. Any person that generates, manages, stores, transports, markets, or burns used oil fuels and intends to utilize the halogen rebuttal procedure to document that their used oil fuel is not a hazardous waste fuel shall notify the Department of their intent within ten days of notice of the Department's certified analytical results and shall complete the additional required tests and documentations within 35 days of notice of the Department's certified analytical results.

E. Any person who generates, manages, stores, transports, markets, or burns used oil fuels and desires to use the halogen rebuttal procedure shall present to the Department the following documentation:
   1. The procedure for the used oil fuel sample collection along with a narrative description and explanation on how, when, where, and by whom the samples were collected for laboratory analysis.
   2. The used oil fuel analytical results and test methods utilized and the name of the laboratory conducting the test.
   3. The evidence that the total halogen concentration of between 1,000 and 4,000 parts per million is from the normal use of clean oil in the generator's equipment or manufacturing process and the identification of the used oil generator providing the evidence.
   4. Other records which document that the used oil has not been mixed with any halogenated hazardous waste during storage, transportation or treatment.

F. The Department shall provide written notice of acceptance or rejection of the person's halogen rebuttal procedure documentation within 45 days of receipt.

R20-2-809 Used Oil and Used Oil Fuel Tank and Container Labeling

A. All tanks or containers larger than five gallons containing used oil or used oil fuel shall be identified by labeling as to their function, capacity in gallons, and contents. All labels shall be impervious to petroleum hydrocarbons and weather conditions. Labels shall be conspicuously posted and legible at all times. Each used oil or used oil fuel tank or container shall have a label affixed to:
   1. Correctly identify the contents as one of the following:
      a. On-specification used oil fuel;
      b. Off-specification used oil fuel;
      c. Used oil; or
      d. Hazardous waste fuel.
   2. Indicate the capacity of tank or container and correctly identify the function as one of the following:
      a. Receiving;
      b. Storage;
      c. Blending;
      d. Treatment system; or
      e. Treatment system waste storage.

B. Labels for above ground tanks or containers with capacities of more than 500 gallons shall:
   1. Conform to the requirements of R20-2-809 (A) and the lettering on the label shall be no less than 1 inch in height nor 1/4 inch in stroke with white or black block lettering on a sharply contrasting background; and
   2. Be firmly attached through the use of bolts, rivets, welds, wire or other method of secure fastening; or
   3. Be painted or stenciled onto the side of the tank or container, provided the paint or stencil is impervious to petroleum hydrocarbons and weather conditions, and is conspicuous and legible at all times.

C. Labels for above ground tanks or containers with capacities of 500 gallons or less but over five gallons shall:
   1. Conform to the requirements of R20-2-809 (A) and (B); and
   2. Have a space on the label to be used for the transporter, marketer, or burner EPA identification number, or the used oil manifest document control number.

D. Labels for underground storage tanks shall conform to the requirements of R20-2-809(A) and:
   1. Be firmly attached to the tank fill pipe through the use of bolts, rivets, welds, wire or other method of secure fastening. The label shall be no less than 1 1/2" by 5" dis-

playing black or white block lettering of not less than 1/4" in height on a sharply contracting background; or

2. Be painted or stenciled adjacent to the tank fill pipe in black or white block lettering on a sharply contrasting background. The lettering shall be no less than 1 inch in height nor 1/4 inch in stroke.

E. Transporters of used oil or used oil fuel shall have the tanks on their vehicles conspicuously posted with lettering that identifies the function of that vehicle as a used oil transporter. The posting is in addition to all of the labeling requirements of R20-2-809 (A).

F. If a Department official finds that off-specification used oil fuel has been mislabeled as on-specification used oil fuel and the used oil fuel product cannot be brought up to standards for on-specification used oil fuel pursuant to A.R.S. § 49-801, the official shall order the off-specification used oil fuel be relabeled or removed by the generator, transporter, marketer, or burner:

1. To a facility capable of refining or blending the off-specification used oil fuel;
2. To another area or burner as defined in A.R.S. § 49-808 where the off-specification used oil fuel may be burned; or
3. Outside the state.

R20-2-810 Record Availability and Review Requirements

A. All records, operating logs, manifests, and quantity receipts for the pick-up and delivery of used oil and used oil fuel which are required to be retained for a period of three years by the transporter pursuant to A.R.S. § 49-804 and by the marketer pursuant to A.R.S. § 49-807 shall be made available for review to the Department on demand.

B. The written statement from a burner or marketer that ADEQ has received a notice of used oil activity description before the first used oil fuel delivery which is required to be retained by the transporter for a period of at least three years pursuant to A.R.S. § 49-804(B) and by the marketer for a period of three years pursuant to A.R.S. § 49-807(E) shall be made available to the Department on demand.

C. The records of analysis or other information used by the generator, transporter, marketer, or burner to classify used oil as on-specification or off-specification used oil fuel pursuant to the standards in A.R.S. § 49-801 which are required to be retained for three years by the transporter pursuant to A.R.S. § 49-804(C), by the marketer pursuant to A.R.S. § 49-807(F), and by the burner pursuant to A.R.S. § 49-808(H) shall be made available to the Department on demand.

D. A burner who generates or receives used oil or off-specification used oil fuel and who then treats that oil to on-specification standards shall retain for a period of three years records of:

1. The amount and type of used oil or any other material mixed, treated or used to blend with the used oil or off-specification used oil fuel to produce an on-specification used oil fuel.
2. The daily, weekly, monthly and yearly amount of on-specification used oil fuel that is burned.
3. The types of treatment and process methods used to produce the on-specification used oil fuel.
4. The laboratory analysis which was conducted pursuant to R20-2-806 to determine the amount and type of contaminates present in the on-specification used oil fuel.

E. A burner who generates off-specification used oil fuel or receives off-specification used oil fuel for use in the devices specified in A.R.S. § 49-808(A) shall retain for a period of three years records of:

1. The amount of used oil generated and received on a daily, weekly, monthly and yearly basis.
2. The amount of off-specification used oil fuel burned on a daily, weekly, monthly and yearly basis.
3. The log that lists the sampling times and dates of any used oil fuel samples which were collected pursuant to R20-2-805804 and tested pursuant to R20-2-806.
4. The laboratory analysis which was conducted pursuant to R20-2-806 to determine the amount and type of contaminates present in the off-specification used oil fuel.

F. A burner who generates on-specification or off-specification used oil fuel or receives on-specification or off-specification used oil fuel for use in the devices specified in A.R.S. § 49-808 shall submit a copy of the notice required by A.R.S. § 49-808(E) to the Department of Weights and Measures at the same time it is submitted to ADEQ.

G. All records requested for review by the Department, upon demand, shall be photocopied and presented to the Department.

R20-2-811 Burners who Treat Off-specification Used Oil Fuel to On-specification Used Oil Fuel Standards

A. The treated oil sampling and testing procedures for those burners identified in A.R.S. § 49-808(G) shall be as follows: At least weekly a burner shall collect and test samples to determine that the final used oil fuel product is on-specification.

1. The sample shall accurately represent the used oil fuel that is being burned or prepared for burning.
2. The sample collection method shall be pursuant to R20-2-805 (A).
3. The sample shall be tested pursuant to R20-2-806(A) by a laboratory that has been licensed by the Department of Health Services to perform test methods cited in R20-2-806(A).

B. The burner shall maintain for a period of three years:

1. A log that lists all of the sampling times and dates;
2. A copy of the analytical results of each test performed which shall include a statement documenting:
   a. The specific method utilized to obtain and prepare each sample for testing; and
   b. The name of the laboratory conducting the test and the specific method used in the analysis of each sample.

C. A burner shall notify the Department within ten days of any final used oil fuel product sample test results that reflect a violation of the standards established in A.R.S. § 49-801 for on-specification used oil fuel.

R20-2-812 Burners who Burn Self-generated, On-specification, Used Oil Fuel

A. Burners that generate and burn only their own used oil fuel pursuant to A.R.S. § 49-808(K) may rely solely on the certified test results of the Department's inspection and sampling of the used oil fuel, provided the test results indicate the used oil fuel is on-specification.

B. The Department shall conduct unannounced inspections and obtain samples at each burner's facility on a random basis at least once a year.

C. The Department's certification of on-specification used oil fuel shall apply to all used oil fuel generated and burned between the Department's certified test results, provided the source generating the used oil remains unchanged.

D. Each violation found by the Department that the used oil fuel being burned is not on-specification shall result in enforce-

~~ment action pursuant to R20-2-111 and notification to ADEQ pursuant to A.R.S. § 41-2066(A)(2).~~

E. ~~A second violation within 90 days of the first violation, based on Department testing and certification that the used oil fuel is not on-specification used oil fuel, shall result in enforcement action pursuant to R20-2-111 and shall void the abrogation of the exception for criminal proceedings for repeated violations pursuant to A.R.S. § 49-808(K).~~

ARTICLE 9 GASOLINE VAPOR CONTROL

~~R20-2-901~~ ~~Definitions~~

~~The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. Title 41, Chapter 15, Article 7 shall apply to this Article unless the context otherwise requires:~~

1. ~~"CARB" means the California Air Resources Board, Sacramento, CA 95812.~~
2. ~~"CARB certified" means, with respect to a vapor recovery system, that it has been certified in an executive order of the California Air Resources Board.~~
3. ~~"Construction commenced", as used in A.R.S. Title 41, Chapter 15, Article 7, means the phase of construction on the site that begins the building of a gasoline dispensing site at a location where there was not one previously, or that begins a period of construction where the total percent of gasoline dispensing equipment that is repaired, replaced, modified, or added is 75% or more of a facility's total equipment.~~
4. ~~"Department" means the Arizona Department of Weights and Measures.~~
5. ~~"Gasoline" means petroleum distillate or a blend that contains a petroleum distillate that has a Reid vapor pressure greater than 4.0 pounds per square inch and is used as a fuel for internal combustion engines.~~
6. ~~"Gasoline vapors" means volatile organic compounds in the displaced vapors including any entrained liquid gasoline.~~
7. ~~"Liquid tight" means that a stage II vapor recovery system with its associated components does not exceed a drip rate of 3 drops per minute of gasoline in its liquid phase.~~
8. ~~"Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.~~
9. ~~"Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system but does not include the repair or replacement of like parts.~~
10. ~~"Monthly throughput" means the total amount of all gasolines transferred into or dispensed from a gasoline dispensing site during a one calendar month period.~~
11. ~~"Motor vehicle" has the same definition as in A.R.S. Title 28, Chapter 1, Article 1.~~
12. ~~"Operator" means a person in control of, or having responsibility for, the day-to-day operation of a gasoline dispensing site.~~
13. ~~"Ozone nonattainment area" means an area within the state of Arizona designated as such by the United States Environmental Protection Agency under Section 107(d) of the Clean Air Act amendments of 1990 (P.L. 101-549).~~
14. ~~"Vapor tight" means that a stage II vapor recovery system has a 95% effective rate.~~
15. ~~"Topping off" means dispensing gasoline into a motor vehicle fuel tank after the nozzle shutoff mechanism has shut off automatically due to the tank being full.~~
16. ~~"Underground storage tank" has the same definition as in A.R.S. § 49-1001(17).~~

~~R20-2-902~~ R20-2-901 Material Incorporated by Reference

The following documents are incorporated herein by reference, on file with the Secretary of State, and do not include any later amendments or editions:

1. ~~Appendices J.2 and~~ Appendix J.5 of "Technical Guidance -- Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Vol. II, ~~U.S. Environmental Protection Agency~~ November 1991 edition (EPA-450/3-91-022b), ~~November 1991, is incorporated herein by reference and is on file with the Department and the Office of the Secretary of State. The incorporated material does not include any later amendments or editions.~~ U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. Department's vapor recovery test procedure (TP-WM-1), *Determination of Vapor Piping Connections to Underground Storage Tanks* (Tie-Tank Test), April 1998, Arizona Department of Weights and Measures, 545 E. Doubletree Ranch Road, Scottsdale, Arizona 85258.
3. The following CARB test procedures:
   a. CARB TP-201.4, *Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.
   b. CARB TP-201.5, *Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.
   c. CARB TP-201.2C, *Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.
   d. CARB TP-201.6, *Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.
   e. CARB TP-201.2B, *Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities*, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.

~~R20-2-903~~ R20-2-902 ~~Applicability~~ Exemptions

A. ~~In determining whether a site's monthly throughput allows exemption under A.R.S. § 41-2132(C), the~~ The owner or operator of a site applying for an exemption shall demonstrate to the Department's satisfaction that there has not been a monthly throughput in excess of that specified in A.R.S. § 41-2132(C) for any month ~~since January 1, 1990, or the date the site began operation, whichever is later~~ for the 2-year period before the date of the application for exemption.

B. A candidate for independent small business ~~marketer~~ exemption shall derive at least 50% of annual income from the sale of gasoline at each gasoline dispensing site that is being con-

sidered for this exemption. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of an owner or operator's state and federal gross income for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of Diesel fuel, and
2. State lottery sales net commissions and incentives.

C. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

~~R20-2-904~~ R20-2-903Equipment and Installation

A. The piping of ~~the~~ both stage I and stage II vapor recovery ~~system~~ systems shall be ~~laid out, sized,~~ designed and constructed as certified in the diagrams, exhibits, attachments, and other documents that are part of the CARB ~~executive order~~ Executive Order for that system. An owner or operator shall not alter stage I and ~~Stage~~ stage II vapor recovery systems and associated components ~~shall not be altered~~ from their CARB-certified configuration without obtaining Department approval.

B. ~~The stage II vapor recovery system may utilize dispensing nozzles equipped with a hold-open latch unless state or local requirements prohibit the use of hold-open latches.~~

The fittings, assemblies, and components of both stage I and stage II vapor recovery systems shall be certified by CARB, and approved for use in Arizona by the Department.

C. Stage I spill containments may have plugged drains in place of drain valves if hand-operated pumps are kept on site for draining entrapped liquid. All Stage II vapor recovery systems shall have pressure/vacuum (P/V) valves on top of the vent lines for gasoline storage tanks.

~~R20-2-905~~ R20-2-904~~Plan Review and Approval~~ Application Process for Authority to Construct

A. Prior to the installation, replacement, modification, or initial operation of a stage I or stage II vapor recovery system, the owner or operator of the gasoline dispensing site shall submit to the Department a ~~plan review and inspections fee of $500 and a plan for the site's vapor recovery equipment on an~~ complete application for ~~Plan Approval and~~ Authority to Construct ~~provided by the Department~~ with the following information:

1. The name, ~~addresses~~ address, and phone ~~numbers~~ number of ~~all~~ any ~~owners, operators, and proposed contractors~~ owner, operator, and proposed contractor, if known;
2. The name of the stage I or stage II system to be installed along with the specific CARB ~~executive order~~ Executive Order that certifies that system;
3. The street address of the site where construction or operation will take place with an estimated timetable for construction or commencement of ~~stage II~~ the operation~~, as appropriate~~;
4. A copy of a blueprint or scaled site plan for the vapor recovery system including ~~any installation notes and site elevations~~ all equipment and piping detail; and~~.~~
5. For nonattainment area stage II vapor recovery systems, an application fee.

B. After review and determination that the plan is in compliance, the Department shall ~~initiate the issuance of the Plan Approval and~~ issue the Authority to Construct ~~by mailing~~ and mail the form in duplicate to the address indicated on the application. ~~The Plan Approval and Authority to Construct shall not be valid until the second copy is signed by the owner or operator and returned to and received by the Department.~~

1. A copy of the Authority to Construct shall be posted at the facility during construction so that it is accessible for Department review.
2. Construction of a stage II vapor recovery system or equipment at a site not having an approved Authority to Construct, may be stopped and no further installation work shall be done until an Authority to Construct is approved.

C. The Department may deny Authority to Construct for any of the following reasons:

1. Providing false or misleading information, or
2. Failure to meet the requirements stated in this Article.

~~C.~~D. If excavation is involved, the Department may visually inspect the stage II underground piping of gasoline dispensing sites that have been issued ~~a Plan Approval and~~ an Authority to Construct, before ~~it~~ the pipeline is buried, for compliance with submitted plans and conditions contained in the ~~Plan Approval and~~ Authority to Construct. The owner or operator of a gasoline dispensing site shall give the Department at least ~~two~~ 2 ~~business~~ days' notice by ~~phone or~~ facsimile of the time when underground piping will be complete. The Department may require the owner to excavate all piping not inspected before burial if the owner or operator has not given the required 2 days' prior notice.

~~D.~~E. Upon completion of construction, a gasoline dispensing site with a valid ~~Plan Approval and~~ Authority to Construct may dispense gasoline for up to 90 days before final approval providing a final inspection has been scheduled in accordance with R20-2-905.

~~Within ten days after beginning the dispensing of gasoline, the owner or operator shall notify the Department and arrange scheduling of a an final inspection which shall include the following tests for:~~

~~1. Balance Systems~~

~~a. A pressure drop vs flow/liquid blockage test from each dispenser for each product grade to its associated underground storage tank following Source Test Procedure TP-91-2, as found in Appendix J.4 of the EPA document, "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Vol. II (EPA-450/3-91-022b), November 1991; and.~~

~~2. A pressure decay/leak test procedure for each product's vapor control system including nozzles, and underground storage tanks performed following San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure, as found in Appendix J.5 of the EPA document, "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Vol. II (EPA-450/3-91-022b), November 1991.~~

~~2. Vacuum Assist Systems. In addition to tests specified in R20-2-905(D)(1), any other test specified in the CARB executive order certifying that the system operates with a 95% effective rate and air-to-liquid ratio tests.~~

~~3. Other Systems. In addition to tests specified in R20-2-905(D)(1), any other test specified in the CARB executive order certifying that system to determine that the system operates with a 95% effective rate.~~

~~E. The owner or operator shall contact the Department to reconfirm the scheduled final inspection and tests by phone or fac-~~

~~simile at least two business days prior to these scheduled final inspection and tests being conducted for the purpose of oversight by a Department official.~~ The ~~Department shall oversee all final testing. Upon successful completion of these tests and a final inspection, the Department shall issue final approval and an operating permit.~~

~~F.~~ ~~If the site fails to pass any of the tests required pursuant to subsection (D) of this Section, the owner or operator shall record the results and make necessary repairs and adjustments. The owner or operator shall also submit to the Department a $300 reinspection fee and shall reschedule with the Department by phone or facsimile a time for repeat tests to be conducted so that they may be again overseen by a Department official.~~

F. An Authority to Construct expires 1 year from the date of issuance or the completion of construction, whichever is sooner.

R20-2-905 Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline, the owner or operator shall provide the Department with a written certification of completion by the contractor and arrange scheduling of an inspection that shall include tests and acceptance criteria specified in the Authority to Construct. The inspection shall be at a time approved by the Department and include the following as they pertain to the specific vapor recovery system installed:

1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank.
2. A pressure decay test procedure for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. The Department may fail the pressure decay test at a gasoline dispensing site if gasoline storage tanks have less than 10% or greater than 60% vapor space. The Department shall compute combined tank vapor space for manifolded systems.
3. Determination of communication from dispenser to tanks for each product, using the Department's test procedure.
4. Determination, by volume meter, of air to liquid volume ratio of vapor recovery systems, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios.
5. Test procedures, other than static pressure or pressure decay tests, that are part of the CARB Executive Order for each specific system.
6. Determination of spillage of Phase II vapor recovery systems, using the CARB TP-201.2C procedure.
7. Determination of liquid removal of Phase II vapor recovery systems, using the CARB TP-201.6 procedure.
8. Determination of flow vs. pressure for equipment in Phase II vapor recovery systems, using the CARB TP-201.2B procedure.
9. Procedures specified by a manufacturer for testing its equipment.
10. Tests required by the Department using Department-owned testing equipment to verify test results. If there is a difference between test results, Department test results shall be determinative.

B. If an owner cancels an inspection test within 2 days of the scheduled test, or fails to notify the Department of the cancellation, the Department shall deem the test failed.

C. If the site fails to pass any of the tests required pursuant to this Article, the owner or operator shall make necessary repairs and adjustments in the time specified by the Department. The owner or operator shall also submit to the Department a reinspection fee and shall reschedule with the Department by mail or facsimile a time for repeat tests to be witnessed by the Department.

D. If the deficiencies are not corrected by a deadline set by the Department, the Department may issue a DWM 53.

R20-2-906 Fees

A. The Authority to Construct application fee is $500.00.

B. The reinspection fee is $300.00, and shall be charged each time:

1. The site fails to pass any of the required tests;
2. Testing personnel do not show up at the facility within 30 minutes after the scheduled time;
3. Upon arrival at the scheduled facility or at any time during the testing process, the Department determines that the facility is not ready to test or cannot complete the test because of inadequate, or improperly installed or maintained equipment or inadequate vapor space in storage tanks; or
4. The stage II pressure decay test has not begun within 30 minutes of the beginning of the scheduled time and the Department defers completion of testing to another time.

~~R20-2-906~~R20-2-907Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 41, Chapter 15, Article 7, and this Article.

B. The owner or operator of a stage II vapor recovery system and associated components shall ~~be operated and maintained~~ operate the system and associated components in a vapor-tight and leak-free condition, in compliance with the manufacturer's specifications, and shall ~~otherwise be maintained~~ maintain the system and associated components in good working condition.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, Stage I fittings, and spill containment. ~~A stage II vapor recovery system or component shall be tagged "Out of Order" and taken out of service immediately.~~

D. The owner or operator shall immediately stop using a Stage II vapor recovery system or component if 1 or more of the following system or component defects occur:

~~1. The faceplate of the nozzle does not make a good seal or a faceplate or facecone is damaged on 1/4 or more of the circumference of the faceplate or facecone (accumulated).~~

~~2. The bellows has a triangular-shaped tear measuring 1/2 inch or more to a side, or has a hole measuring 1/2 inch or more in diameter, or has a slit or tear measuring 1 inch or more in length.~~

~~3. A nozzle shutoff mechanism, vapor oxidation/incineration, vacuum-producing device, nozzle trigger, pressure valve, vacuum relief valve, vapor check valve, vent pipe, or dry break is malfunctioning.~~

~~4. The spring or latching device within the bellows is missing, broken, or distorted;~~

~~5. The nozzle spout is loose, broken, or damaged;~~
~~6. The hose is cut or torn to allow any liquid or vapor leakage; the hose is flattened or crimped in a manner that blocks vapor passage or so that the pressure drop in the line exceeds by a factor of two or more the value as certified in the approved system;~~
~~7. The flow restrictor within the dispenser is missing or installed backwards;~~
~~8. The nozzle end or dispenser end swivels are missing, defective, or leaking;~~
~~9. The vapor return line is malfunctioning or blocked;~~
~~10. A seal on an underground tank is missing, or leaking, or a valve is open;~~
~~11. Any other component identified in the diagrams, exhibits, attachments and other executive order Order for that system is missing, disconnected, or malfunctioning.~~

1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
3. A nozzle bellows has a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring 1 inch or more in length;
4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds.84 inch, or the plastic insert in the tip of the spout is loose;
8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only 1 nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
10. A dispenser mounted vacuum pump that is not functioning;
11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
    d. Swivels or hoses do not provide swivel action at either the nozzle or dispenser end of the hose and allow a kink to form in the hose when it is placed in service, or any swivel, or hose connection that is leaking; or
    e. Any balance hose that does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
13. The Stage I installation is not properly installed or maintained, in that:
    a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, there are non-functioning drain valves, or drain valves that do not seal;
    b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    c. Coaxial Stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system monitoring system or equipment with electronic safeguards, required by CARB Executive Orders or certification letters or the Authority to Construct, that are not operational or that malfunction; or
20. Any other component identified in the diagrams, exhibits, attachments or other documents that are part of the CARB Executive Order or approved by CARB certifica-

tion letters or required by the Authority to Construct for that system is missing, disconnected, or malfunctioning.

~~D.~~E. The owner or operator shall also inspect for the presence and proper placement of public information signs ~~for public information pursuant to~~ required by A.R.S. § 41-2132(F) and ~~R20-2-907(B)~~ this Article.

~~E. Except during repair activity, an "Out of Order" tag pursuant to subsection (C) or stop sale, stop use tags placed pursuant to R20-2-909(B) and R20-2-910(A) shall not be removed. The tagged equipment shall not be used, permitted to be used, or provided for use until the tagged equipment has been repaired, replaced, or adjusted, as necessary to comply with this Article, and has been re-authorized for use by the Department.~~

F. For a stage II vacuum-assist vapor recovery system ~~using either vapor jet or vacuum pump, with or without an oxidation processing unit,~~ the owner or operator shall immediately place damaged or malfunctioning equipment out of service and shall notify the Department by ~~phone or~~ facsimile no more than ~~one~~ 1 ~~business~~ day after the malfunction of a ~~vapor jet or vacuum pump or oxidation processing unit~~ central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within 5 days of the repair to the Department.

G. Proper operation of the stage I system, pursuant to A.R.S. § 41-2132(D)(4), shall include the requirement to recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. Any underground tank tightness test shall be conducted in a manner so that gasoline vapors are not emitted to the atmosphere.

~~R20-2-907~~ R20-2-908Training and Public Education

A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be properly installed, operated and maintained in accordance with the manufacturer's specifications and CARB ~~executive order~~ Executive Order. ~~Documentation~~ The operator shall maintain documentation of this training for each operator ~~shall be kept~~ on-site and ~~provided~~ documentation to ~~a~~ the Department ~~official~~ on request.

B. In addition to the information required in A.R.S. § 41-2132(F), ~~a~~ an operator of a gasoline dispensing site with stage II vapor recovery shall display a Department telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information ~~shall be placed~~ on ~~or near~~ each face of each gasoline dispenser. The headings shall be at least ~~20 point~~ 3/8 inches and shall be readable from up to three feet away for decal signs, and from up to six feet away for permanent (non-decal) signs. Decals shall be located on each face of the dispenser and within 1 foot of the dispenser cost and gallon readout.

~~R20-2-908~~ R20-2-909Record keeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done pursuant to ~~R20-2-906(C)~~ this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs ~~of~~ that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt from requirements to install and operate stage II vapor recovery equipment, pursuant to A.R.S. § 41-2132(C), shall maintain a log at the site showing monthly throughputs. ~~Beginning July 1, 1994, a~~ The owner or operator shall annually submit a copy of these logs representing the previous 12 months throughputs ~~shall be submitted annually~~ to the Department. If any throughput requirement provided in A.R.S. § 41-2132(C) and ~~R20-2-903(A)~~ this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. ~~and~~ The owner or operator shall within 6 months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article ~~within 6 months of the end of the month that the throughput requirements are exceeded or before the compliance date in A.R.S. § 41-2132(I), whichever is later~~.

D. ~~All~~ An owner or operator shall keep all records required by this Article ~~shall be kept~~ at the gasoline dispensing site for ~~a minimum of one~~ at least 1 year and shall ~~be made~~ make these records available to the Department upon request.

~~R20-2-909~~ R20-2-910Annual Tests

A. The stage I and stage II tests required ~~in~~ by A.R.S. § 41-2065(15) ~~shall be the tests~~ are described in ~~R20-2-905(D)~~ this Article. ~~These tests shall be arranged by the owner or operator and conducted annually prior to the expiration date of the operating permit issued following successful completion of initial inspection and acceptance tests or the last renewal~~ The owner or operator shall arrange these tests annually, with Department approval, to be completed by the annual test date. The annual test date is established on the date of the last annual test or a later date approved by the Department. The annual test shall be performed with the presence of a witness from the Department. ~~Within 30 days before the annual test date, the owner or operator shall contact the Department by phone or facsimile and arrange a schedule for tests to be overseen by a Department official.~~

B. If the site fails to pass any of the tests required pursuant to subsection (A), the owner or operator shall make any necessary repairs or adjustments. The owner or operator shall ~~also~~ submit ~~to the Department a $300~~ the appropriate reinspection fee and ~~shall~~ reschedule with the Department by phone or facsimile a time for repeat tests to be conducted so that they may again be ~~over seen~~ witnessed by ~~a~~ the Department ~~official~~.

C. If the annual stage II pressure decay test is not begun within 30 minutes of the scheduled start time, the Department may defer completion to another time.

R20-2-911 Compliance Inspections

In addition to the annual test, the Department shall conduct a compliance inspection of Stage I and Stage II vapor recovery installations at least annually. Compliance inspections shall be unannounced. If results of the compliance inspection reveal violations of A.R.S. Title 41, Chapter 15 or this Article, the Department may require the owner or operator to schedule a specific test as required in R20-2-910.

~~R20-2-910~~ R20-2-912Enforcement

A. If ~~an official of~~ the Department finds that stage II vapor recovery equipment at a gasoline dispensing site is defective or otherwise in violation of one or more of the provisions of this Article or A.R.S. Title 41, Chapter 15, ~~Article 7,~~ the ~~official~~ Department shall issue to the owner or operator a ~~stop use order~~ DWM-53 ~~pursuant to A.R.S. §§ 41-2065(15) and 41-2066(A)(2) with respect to the equipment in violation~~. The order shall extend to all equipment at the site that has reduced vapor recovery performance due to a violation. ~~One or more stop sale, stop use tags shall then be affixed to~~

~~the equipment~~ A tag that is the subject of the order ~~in such a manner as to be seen by the~~ shall then be affixed to the equipment in public ~~or any individual on the premises near the gasoline dispensing equipment~~ view. ~~Equipment subject to a stop use order shall not be put back in service until reauthorized for use by the Department.~~ The owner or operator may be required to demonstrate that a Stage II vapor recovery system meets the 95% effective level by conducting one or more of the tests specified in ~~R20-2-905(D)~~ this Article before the equipment may be placed in service.

B. The owner or operator of a gasoline dispensing site that has been issued a ~~stop use order~~ DWM-53 pursuant to subsection (A) ~~of this Section~~ may request an informal review of the order by making ~~the~~ a request in writing to the ~~Director~~ Department within ~~ten~~ 10 ~~business~~ days of the order. Notice of the time and place of the informal review shall be mailed to the ~~requestor~~ owner or operator at least ~~five~~ 5 ~~business~~ days prior to the informal review. Disposition of the informal review shall be mailed to the owner or operator within ~~five~~ 5 ~~business~~ days after conclusion of the informal review. Unless the order is vacated by the ~~Director~~ Department, or the equipment is reauthorized for use by the Department, the ~~stop use order~~ DWM-53 shall remain in effect during these proceedings.

C. The Department may impose civil penalties for stage I and stage II violations pursuant to A.R.S. § 41-2115.